132-107

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~538.~~ 29

THE COUNTY OF SCOTLAND IN THE STATE OF MISSOURI, PLAINTIFF IN ERROR,

vs.

WILLIAM HILL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED APRIL 19, 1886.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1885, thereof, between William Hill, plaintiff, and The County of Scotland, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fifth day of November, in the year of our Lord one thousand eight hundred and eighty-five.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk Circuit Court of the United States,
Eastern District of Missouri.
By —— ——, *Deputy.*

Allowed by—
SAMUEL TREAT, *Judge.*

1½ [Endorsed:] Nos. 1153 & 1287 (consolidated). United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Writ of error to the circuit court of the U. S., eastern district of Missouri. Returned and filed 5th day of Nov., 1885. A. P. Selby, clerk.

Return to Writ.

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of St. Louis, this 18th day of December, A. D. 1885.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk of said Court.

2 The United States of America to William Hill, Greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States to be holden at Washington on the second Monday of October next pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the County of Scotland, in the State of Missouri, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this fifth day of November, in the year of our Lord one thousand eight hundred and eighty-five.

SAMUEL TREAT,
Judge United States District Court, Eastern District of Missouri.

Service accepted Nov. 5th, 1885.

WM. HILL,
By JOHN H. OVERALL,
His Att'y.

2½ [Endorsed:] Nos. 1153 & 1287, consolidated. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Citation. Filed Nov. 5, 1885. A. P. Selby, clerk.

3 United States Circuit Court for the Eastern District of Missouri. March Term, 1885.

WILLIAM HILL *vs.* SCOTLAND COUNTY. } Nos. 1153 & 1287.

FIRST NAT'L B'K *vs.* SCOTLAND COUNTY. } No. 2456.

CHARLES H. MELLEN *vs.* SCOTLAND COUNTY. } No. 2482.

APRIL 2ND, 1885.

It is stipulated by and between plaintiffs and defendants in the above-entitled cause as follows, to wit:

1st. Juries shall be waived in the above-entitled causes.

2nd. The above causes shall be continued by consent until next term of court.

3rd. Depositions may be taken in either of said causes by either party, and when so taken may be read in either of the other cases as if taken in such other cases, so far as pertinent and relevant, notice of taking such depositions to be upon five days' notice to the other party.

4th. The above agreement having been made upon the express understanding that the causes are to be tried before Judge Brewer in order to obtain his rulings upon the law questions involved, it is understood and agreed that if for any reason such cases shall not be thus heard by Judge Brewer there shall be no obligation
3½ hereunder to waive a jury in either of said causes. In event of the death or resignation of Judge Brewer his successor may in same manner try said causes.

A. J. BAKER &
J. H. OVERALL,
Att'y for Pl'ff.
HENRY A. CUNNINGHAM,
Att'y for Defendant.

4 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States for the Eastern District of Missouri.

Be it remembered that on the 29th day of January, A. D. 1879, there was filed in said court a certain amended and consolidated petition in words and figures following, to wit:

Amended Petition.

In the Circuit Court of the United States for the Eastern Dist. of Missouri. March Term, A. D. 1879.

WILLIAM HILL, Plaintiff,

vs.

THE COUNTY OF SCOTLAND, IN STATE OF MISSOURI, Defendant.

The above-named plaintiff, for his amended petition filed in pursuance of the agreement of the parties hereto now on file, states—

That the said plaintiff is a resident and citizen of the State of Illinois, and that the defendant is an organized county and citizen of the State of Missouri.

Plaintiff further states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. five, (5) for one thousand dollars; that said bond was issued by the said county of Scotland and delivered to the Missouri, Iowa, and Nebraska Railway Company, a corporation existing under the laws of the States of Missouri and Iowa, in payment for shares of stock

which the said Scotland county had subscribed to said rail-
5 way corporation under authority of law; that said coupon is payble at the Farmers' Loan and Trust Company's Bank in the city of New York.

That said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873; that said coupon is now due and unpaid.

Plaintiff says that the defendant has made no provision for the payment of said coupon, nor has the defendant now nor has it at any time had any money in the bank of the said Farmers' Loan and Trust Company, in the city of New York, subject to the payment of said coupon.

Plaintiff therefore demands judgment for the amount of said coupon and interest thereon from maturity.

And for further cause of action the plaintiff says that he is the owner and holder of the following-described coupons herewith filed, detached from the following bonds of said Scotland County, to wit: The third maturing coupons detached from bonds numbered 31, 177. 164, 165, 166, 90, 92, 4, 167, 30, 163, 6, 29, 198, 197, 196, 100, 15, 14, 13, 199, 200, 7, 8, 9, 99, 191, 197, 193, 194, 195, 1, 117, 116, 145, 3, 2, 176, 175, 174, 173, 16, 17, 18, 63, 69, 65, 66, 67, 68, 69, 70, 75, 81, 82, 97, 98, 87, 188, 189, 190, 130, 129, 55, 53, 128, 54.

Each of the said third maturing coupons are for eighty dollars and are due December 31st, 1873.

Also the fourth maturing coupons from the following numbered bonds of said Scotland county, to wit:

Bonds numbered 5, 31, 177, 165, 166, 90, 92, 30, 4, 163, 167, 6, 29, 200, 199, 198, 197, 196, 100, 14, 15, 13, 7, 8, 9, 99, 191, 192, 193, 194, 195, 1, 86, 147, 146, 145, 3, 2, 175, 176, 174, 173, 16, 17, 18, 63, 64, 65, 66, 67, 68, 69, 70, 75, 81, 82, 97, 98, 187, 188, 189, 190, 164.

6 That all of said fourth maturing coupons fell due Dec. 31, 1874.

Also the following fifth maturing coupons from the bonds of said Scotland county, numbered as follows, to wit: 176, 175, 174, 173, 5, 31, 177, 164, 165, 166, 92, 90, 4, 167, 163, 30, 29, 6, 200, 199, 198, 197, 196, 100, 15, 14, 13, 7, 8, 9, 99, 191, 192, 193, 194, 195, 147, 146, 145, 3, 2, 16, 17, 18, 63, 64, 65, 66, 67, 68, 69, 70, 75, 81, 82, 97, 98, 187, 188, 189, 190.

Said fifth maturing coupons falling due on the 31st day of December, 1875.

Also the following sixth maturing coupons detached from the bonds of said Scotland county, to wit: 176, 175, 174, 173, 5, 31, 177, 164, 165, 92, 166, 90, 4, 167, 163, 6, 30, 29, 199, 198, 197, 196, 100, 14, 13, 200, 15, 7, 8, 9, 99, 191, 192, 193, 194, 195, 147, 146, 145, 3, 2, 16, 17, 18, 63, 64, 65, 66, 67, 68, 69, 70, 75, 81, 82, 97, 98, 187, 188, 189, 190, 59, 122, 120, 119, 121, 118, 62, 58, 21, 60, 19, 61, 148, 87, 72, 74, 73, 151, 152, 150, 149, 105, 104, 103, 102, 101, 106, 159, 134, 158, 89, 133, 77, 84, 76, 108, 107, 95, 96, 50, 186, 51, 52, 185, 153, 155, 156, 154, 33, 32, 157, 34, 12, 11, 38, 79, 78, 80, 88, 136, 135, 137, 10, 162, 161, 160, 179, 26, 25, 35, 27, 37, 36, 42, 39, 40, 140, 46, 45, 44, 71, 36, 57, 139, 141, 138, 85, 118, 93, 20.

All of which said sixth maturing coupons fell due on the 31st day of December, 1876.

Also the following seventh maturing coupons, detached from said Scotland county bonds, and numbered as follows, to wit: 106, 105, 104, 103, 102, 101, 156, 155, 154, 153, 34, 33, 32, 176, 175, 174, 173, 5, 31, 177, 164, 165, 159, 158, 134, 133, 89, 84, 77, 76, 166, 92, 90, 4, 88, 80, 79, 78, 38, 12, 11, 10, 162, 161, 160, 137, 136, 135, 167, 163,
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7 39, 56, 57, 63, 64, 65, 66, 67, 68, 69, 70, 75, 81, 82, 93, 85, 97,
98, 141, 140, 139, 178, 142, 179, 187, 188, 189, 190, 50, 51, 52, 95, 96, 107, 108, 185, 186, 157, 72, 73, 74, 87, 148, 149, 150, 151, 152.

All of which said seventh maturing coupons matured on the 31st day of December, 1877.

Also the following second maturing coupons, detached from said Scotland county bonds, numbered as follows, to wit, 53, 54, 55, which said second maturing coupons fell due on the 31st day of December, 1872.

Also the following eighth maturing coupons, detached from said Scotland county bonds, and numbered as follows, to wit: 106, 65, 153, 10, 4, 12, 78, 88, 80, 79, 164, 31, 133, 173, 176, 175, 174, 56, 103, 40, 39, 18, 17, 16, 105, 104, 102, 101, 97, 57, 85, 93, 82, 81, 75, 69, 70, 68, 178, 179, 187, 188, 190, 189, 142, 141, 138, 98, 67, 139, 140, 66, 63, 64, 165, 5, 177, 134, 158, 159, 77, 76, 89, 84, 34, 155, 157, 32, 156, 33, 154, 90, 38, 92, 136, 137, 160, 162, 11, 135, 161, 166, 26, 25, 6, 37, 36, 35, 30, 29, 27, 163, 167, 44, 45, 71, 46.

All of the above 8th maturing coupons were due on the 31st day of Dec., A. D. 1878.

Plaintiff says that all the above and foregoing coupons are due and unpaid; that the bonds from which said coupons are detached were issued by the said county of Scotland and delivered to the said Missouri and Nebraska Railroad Company in payment for stock which the said county had subscribed to said railway corporation under authority of law, and are payable at the Farmers' Loan and Trust Company's, in the city of New York; that each of said coupons are for the sum of eighty dollars. Plaintiff says that the defendant has made no provision for payment of said coupon,
8 nor has defendant now nor has it at any time had any fund in the bank of the said Farmers' Loan and Trust Company to pay said coupons.

Plaintiff therefore demands judgment for the amount of said coupons, to wit, in the sum of forty-four thousand five hundred and sixty dollars and interest from maturity of the said several coupons at six per centum per annum, and for costs.

BAKER & DRAKE AND
F. T. HUGHES, *For Plaintiff.*

And afterwards, to wit, on the 20th day of March, A. D. 1885, the following amended answer to plaintiff's amended and consolidated petition was filed, which said amended answer is in words and figures following, to wit:

Amended Answer.

In the Circuit Court of the United States for the Eastern District of Missouri. M'ch Term, 1885.

WILLIAM HILL, Plaintiff, *vs.* SCOTLAND COUNTY, IN THE STATE OF MISSOURI, Defendant.	Nos. 1153 and 1287. Consolidated.

Now comes the defendant, by Henry A. Cunningham, its attorney, and by leave of court makes this its amended answer to plaintiff's amended and consolidated petition.

1. For answer to said first count or cause of action in plaintiff's petition contained defendant avers that it did not make the pretended bond or either of the pretended coupons in said count described.

2. For further answer to said first count or cause of action
9 in plaintiff's petition contained defendant avers that he is not the real party in interest prosecuting this action.

3rd plea. Defendant, for further answer to said first count of plaintiff's petition, avers that on the 9th day of August, 1870, one William Dawson and one Isaac A. Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, a court of record then and at all times thereafter composed of three members, did cause to be entered upon the records of said court what purported to be an order of said court, in words and figures as follows, viz:

"At this day a petition was presented to the court, signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Gwynne, R. P. Wayland, and divers other persons, to the number of thirteen hundred and sixty-five, tax-payers and residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock to the Missouri, Iowa and Nebraska Railroad Company, payable in county bonds, due twenty-five years from date, bearing interest at the rate of eight per cent. per annum, the interest payable semi-annually, commencing from date of completion and of contract on the part of said railway company. Now, therefore, in consideration of the prayer of the petitioners and in pursuance and by virtue of law and the power that is given to the court to subscribe stock in said railway company, it is ordered by the court that the county of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company, payable in the bonds of said county of the denomination of one thousand dollars each, due twenty-five years from the date of issue and bearing eight per cent. per an-

num, the interest payable annually in the city of New York on the terms and conditions following: One hundred thou-
10 sand dollars of said bonds to be delivered to said railway company when said road shall have been graded, bridged, and tied, and the track laid and the cars running through from Alexandria, Missouri, to a permanent depot located in one-half mile of the court-house in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have completed their said line of road from Memphis to the west or north line of said county and the cars running over the same through said county: Provided the said railroad shall be so located as to miss the west line and strike the north line of said county, it shall do so at a point not exceeding four miles east of the northwest corner of said county. Said railroad shall be so built and the cars running through as aforesaid within two years from the date of this order; otherwise this subscription shall be null and void; and it is ordered that Henry M. Gorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company, to represent said county at the meetings of the stockholders of said company, to cast the vote of said county and receive the dividend; and in order that the interests of the people may be fully guaranteed the court doth appoint as trustee Charles Mety, of said county, whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued, and to have the custody of the same; and as soon as the said railroad company shall have complied with the stipulations above set forth the said trustees shall deliver the aforesaid bonds to the treasurer or other authorized agent of said
11 railway company, and shall at the same time receive from said treasurer or the agent of said company an equal amount in certificates of stock of said railway company, which said certificates of stock the same trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his actions, shall be presented to the county court at the next meeting thereafter; and that said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security to be approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trustee. It is further ordered by the court that the county attorney of said county shall proceed to have said bonds printed or lithographed, and that the presiding justice of the county court of said county shall sign the same, and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annexed coupons attached, and the trustee aforesaid shall, when he delivers said bonds to said railway company, detach all, any, or all coupons for interest that may have passed maturity and cancel and return the same to the treasurer of said county when his report as aforesaid is made, and shall enter upon the next maturing coupons of said bonds the date of delivery

to said company, in order that said company shall receive interest only from the date they are entitled to receive said bonds. It is provided further that said railway company shall pay all the expenses of lithographing and printing said bonds.

Defendant avers that, without any other order or authority than is heretofore set forth, the said William Dawson did sign (dur-
12 ing a vacation of said county court), as presiding justice of Scotland county court of Missouri, two hundred lithographed papers, each of which, excepting numbers of bond and date of countersignature and delivery, was in words and figures as follows:

"$1,000. UNITED STATES OF AMERICA. No. 5.

"*Eight Per Cent. Railroad Bond.*

"County of Scotland. Twenty-five years.

"Know all men by these presents that the County of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa & Nebraska Railway Company, a corporation existing under and by virtue of the laws of the State of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company (formerly Alexandria and Bloomfield Railroad Company), of the State of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company, or bearer, at the Farmers' Loan and Trust Company, New York, on the thirty-first day of December, A. D. 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually in the city of New York on the thirty-first day of December in each year, as the same shall become due, on the presentation of the coupon hereto annexed, this bond being issued under and pursuant to an order of the county court of said Scotland county for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the
13 Alexandria and Bloomfield Railroad Company, approved February 9, 1857.

"In testimony whereof the said County of Scotland has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court.

"This done, at the town of Memphis, in the county of Scotland, in the State of Missouri, this first day of September, A. D. 1870.

"WILLIAM DAWSON,
"*Presiding Justice of the County Court of Scotland County, Mo.*

"Attest:
[SEAL.] "STERLING McDONALD,
"*Clerk of the County Court of Scotland County, Mo.*"

Countersigned and delivered this — ——.

——— ———, *Trustee.*

That to said bonds were attached lithographed interest coupons, which, excepting dates and numbers, were in words and figures as follows:

"$80. MEMPHIS, MO., *Sept.* 1, 1870.

"The County of Scotland, State of Missouri, will pay to the bearer, on Dec. 31, 187–, at the Farmers' Loan and Trust Company, in New York, eighty dollars, being one year's interest on bond No. —, for $1,000.

"S. McDONALD, *County Clerk.*"

That after said Dawson, styling himself presiding justice of the Scotland county court of Missouri, had signed each of said bonds one Sterling McDonald, who had previously been
14 elected clerk of the county court of the county aforesaid, signed each of said papers, as clerk of Scotland county court of Missouri, and made upon each of said bonds the impression of a seal purporting to be the seal of Scotland county court of Missouri, which seal had never been adopted by such court by any order entered upon its records; that thereafter, about September 1st, 1871, said McDonald delivered said pretended bonds and the lithographed coupons thereto then annexed, including among same each and every coupon in the — count of plaintiff's — petition described, to one Charles Mety, who receipted for same, styling himself therein "Trustee of Scotland county, Missouri." Defendant avers that although no subscription had ever been made by this defendant to the capital stock of the Alexandria and Bloomfield Railroad Company, or any other railroad company; and although no part of the route of the Alexandria and Bloomfield Railroad Company was then in or through any part of said Scotland county, but, on the contrary, had been, in 1864, in due form of law, by said Alexandria and Bloomfield Railroad Company, permanently located beyond the limits of said Scotland county; and although said proposed subscription by the said Dawson and Forgner, justices of the county court aforesaid, in the name of this defendant, had never been accepted or the conditions or terms thereof complied with by said Missouri, Iowa and Nebraska Railway Company; and although there was no corporation known as the Alexandria and Nebraska City Railway Company, nor was such pretended corporation formerly the Alexandria and Bloomfield Railroad Company; and although there was no lawful corporation known as the Iowa Southern Railway Company; and although the Missouri, Iowa and Nebraska Railway
15 Company was not a corporation existing under or by virtue of the laws of the States of Missouri and Iowa; and although there never was a lawful consolidation of said pretended corporation as alleged in said bonds; and although said bonds were lithographed and made to contain said recitals by order only of F. M. Drake; and although said bonds were not actually printed until the year 1871, and were signed by said Dawson and McDonald long

after the date inserted in said bonds, the said Mety, without other authority than the aforesaid entry, did, about the twenty-fifth of September, 1871, and the eleventh of December, 1871, deliver the aforesaid pretended bonds and coupons to certain persons purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company in exchange for utterly worthless certificates of shares of stock purporting to have been issued by said company to this defendant.

That before said Mety, as trustee, thus delivered said bonds at the dates aforesaid, he wrote upon the face of each of said bonds numbered from 1 to 100 the words "Countersigned and delivered this the 21st of September, 1871," and upon each of said bonds numbered from 101 to 200, inclusive, the words "Countersigned and delivered December 11, 1871;" that after the making of the order aforesaid, as entered upon the records of the county court of Scotland county, and after said bonds had reached the hands of said trustee, but before the delivery of either of said bonds or coupons, the said Missouri, Iowa and Nebraska Railroad Company executed and delivered to a trustee in said mortgage named a mortgage to secure negotiable bonds to the amount of six millions of dollars upon all stock and property or franchises, present or prospective, of said railroad company; that the immediate effect of said mortgage was to
16 render the said common stock of said railroad company utterly valueless, but this defendant avers that neither the said county court of the county of Scotland nor the justices thereof, nor the said Dawson nor McDonald, nor the said Mety, in any of the various orders or acts hereinbefore described, were the agents of this defendant, but that all of said acts and orders and all of the aforesaid pretended bonds and coupons are absolutely null and void, because no part of the route of the Missouri, Iowa and Nebraska railway or of the Alexandria and Bloomfield Railroad Company at the respective dates of said orders or acts was within the county of Scotland, in the State of Missouri, because at no time prior or subsequent to the dates of either of said orders or acts or at or prior or subsequent to the dates of the execution or delivery of said pretended bonds or the acceptance by said Mety of said worthless certificates of stock did the county court of the county of Scotland, in the State of Missouri, cause any election to be held in said county to ascertain the sense of the tax-payers of said county as to any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of any other company, or to ascertain the sense of said taxpayers as to whether any such subscription should be paid by issue of county bonds or by taxation, or against paying any such subscription by direct taxation, because at no time at any election ever held in said county of Scotland have a majority of or any of the resident voters of said county of Scotland, in the State of Missouri, voted in favor of any subscription by said county or by the county court of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of
17 any other company, because at no election (whether general or special election) ever held therein have two-thirds

of the qualified voters of said county of Scotland, in the State of Missouri, ever assented to any subscription of stock by, or to any loan of the credit of, said county of Scotland to the Missouri, Iowa and Nebraska Railway Company or the Alexandria and Bloomfield Railroad Company, because the county court of said county of Scotland has never at any time ordered any election to be held in said county of Scotland, in the State of Missouri, for the purpose of ascertaining the sense of the tax-payers thereof or in order to obtain the assent of two-thirds of the qualified voters of said county or a majority of the resident voters of said county to any of the acts or orders hereinbefore described. Defendant avers that plaintiff received coupons in the first count of his amended petition declared upon after the same had been detached from the pretended bond hereinbefore described and after the dates of maturity of said coupon. Defendant avers that neither the plaintiff nor any other person or corporate body from whom he received the coupon aforesaid ever became the holder thereof by giving any valuable consideration, and that no individual or corporate body ever paid any valuable consideration to anybody for either of said coupons or the pretended bonds to which they were originally annexed, and that the plaintiff and the persons or corporate bodies from whom he received said coupons, and every person or corporate body ever holding either of the coupons or bonds aforesaid, had, since the occurrence thereof, actual as well as constructive notice of every fact in this defendant's first plea alleged.

4. For answer to the second count or cause of action in plaintiff's petition contained defendant denies each and every
18 allegation in said count in said petition contained.

5. For further answer to said second count or cause of action in plaintiff's petition contained defendant avers that it did not make the pretended bond or either of the pretended coupons in said count described.

6th plea. For further answer to 2nd count of plaintiff's amended petition defendant avers that plaintiff cannot maintain his action herein upon the following-described coupons, sixth maturing coupons, purporting to have been detached from bonds numbered 153, 154, 155, 156, 157, 32, 33, and 34, because heretofore, to wit, at the M'ch term, 1877, of the circuit court of the United States for the eastern district of Missouri, said several coupons were filed for suit in a certain suit in said court pending, to wit, in the suit of Osman C. Du Souchet *vs.* Scotland County, No. 751 of this court, M'ch term, 1876, and that thereafter in said court, on the 12th of January, 1878, said several coupons were merged into final judgment in said court rendered in behalf of said plaintiff, and that said judgment has never been modified or reversed, but remains in full force and effect, and has been collected or enforced by process of this court.

7th plea. For further answer to 2nd count of plaintiff's amended petition defendant avers that plaintiff cannot maintain his action herein upon the following-described coupons, sixth maturing coupons, purporting to have been detached from bonds numbered 10, 11, 12, 78, 79, 80, 38, 88, 135, 136, 137, 160, 161, and 162, because hereto-

fore, to wit, at the —— term, ——, of the circuit court of the United States for the eastern district of Missouri, said several coupons
19 were filed for suit in a certain suit in said court pending, to wit, in the suit of William Hill *vs.* Scotland County, being case numbered 752, M'ch term, 1876, and that thereafter in said court, on the 25th of September, 1877, said several coupons were merged into final judgment in said court rendered in behalf of said plaintiff, and that said judgment has never been modified or reversed, but remains in full force and effect, and has, in great part, been collected or enforced by process of this court.

8th plea. For further answer to 2nd count of plaintiff's said petition defendant avers that plaintiff cannot maintain his action herein upon the following-described coupons, sixth maturing coupons, purporting to have been detached from bonds numbered 179, 26, 25, 35, 27, 37, 36, 42, 39, 40, 140, 190, 46, 45, 44, 71, 56, 57, 139, 138, 141, 85, 178, 93, 118, and 98, because heretofore, to wit, at the —— term, ——, of the circuit court of the United States for the eastern district of Missouri, said several coupons were filed in a certain suit in said courts pending, to wit, in the suit of James B. Dodge *vs.* Scotland County, being case numbered 753, M'ch term, 1876, and that thereafter in said court, on the 25 of September, 1877, said several coupons were merged into final judgment in said court rendered in behalf of said plaintiff, and that said judgment has never been modified or reversed, but remains in full force and effect, and has in great part been collected or enforced by process of this court.

9th plea. For further answer to 2nd count of plaintiff's said petition, defendant avers that plaintiff cannot maintain his action upon the following-described coupons, sixth maturing coupons, purporting to have been detached from bonds numbered 104, 105,
20 103, 102, 101, 106, 159, 134, 158, 89, 133, 77, 84, & 76, because heretofore, to wit, at the —— term, ——, of the circuit court of the United States for the eastern district of Missouri, said several coupons were filed for suit in a certain suit in said courts pending, to wit, in the suit of Charles H. Mellen *vs.* Scotland County, being case No. 754, M'ch term, 1876, and that thereafter in said court, on the 25 of September, 1877, said several coupons were merged into final judgment in said court rendered in behalf of said plaintiff, and that said judgment has never been modified or reversed, but remains in full force and effect, and has in great part been collected or enforced by process of this court.

10th plea. For further answer to 2nd count of plaintiff's said petition defendant avers that plaintiff cannot maintain his action herein upon the following-described coupons, sixth maturing coupons, purporting to have been detached from bonds numbered 108, 107, 95, 50, 186, 51, 53, and 185, because heretofore, to wit, at the —— term, ——, of the circuit court of the United States for the eastern district of Missouri, said several coupons were filed for suit in a certain suit in said courts pending, to wit, in the suit of Edward Manning *vs.* Scotland County, being case number 755, M'ch term, 1876, of this court, and that thereafter in said court, on the 25th of September, 1877, said several coupons were merged into final judgment

in said court rendered in behalf of said plaintiff, and that said judgment has never been modified or reversed, but remains in full force and effect, and has in great part been collected or enforced by process of this court.

11th plea. For further answer to 2nd count of plaintiff's said petition defendant avers that plaintiff cannot maintain
21 his action herein upon the following-described coupons, sixth maturing coupons, purporting to have been detached from bonds numbered 148, 87, 72, 73, 74, 149, 150, 151, 152, because heretofore, to wit, at the —— term, ——, of the circuit court of the United States for the eastern district of Missouri, said several coupons were filed for suit in a certain suit in said court pending, to wit, in the suit of John K. Findlay *vs.* Scotland County, being case number 763, M'ch term, 1876, of this court, and that thereafter in said court, on the 25 of September, 1877, said several coupons were merged into final judgment in said court rendered in behalf of said plaintiff, and that said judgment has never been modified or reversed, but remains in full force and effect, and has in great part been collected or enforced by process of this court.

12th plea. For further answer to 2nd count of plaintiff's said petition defendant avers that plaintiff cannot maintain his action herein upon the following-described coupons, sixth maturing coupons, purporting to be detached from bonds numbered 59, 122, 120, 119, 121, 118, 62, 58, 25, 21, 20, 60, 19, 61, because heretofore, to wit, at the —— term, ——, of the circuit court of the United States for the eastern district of Missouri, said several coupons were filed for suit in a certain suit in said courts pending, to wit, in the suit of Wm. M. Spackman *vs.* Scotland County, being case No. 833, M'ch term, 1876, and that thereafter in said court, on the 25 of September, 1877, said several coupons were merged into final judgment in said court rendered in behalf of said plaintiff, and that said judgment has never been modified or reversed, but remains in full force and effect, and has in great part been collected or enforced by process of this court.

22 13th plea. For further answer to the second count of plaintiff's said petition defendant avers that the act purporting to be an act of the General Assembly of the State of Missouri approved February 19, 1866, entitled "An act to amend an act to incorporate the Alexandria and Bloomfield Railroad Company," approved February, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clark county, Missouri, to Nebraska, a city in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri, and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company," never became a law; more especially that said act never became a law in conformity to the twenty-third and twenty-fourth sections of the IV article of the constitution of the State of Missouri, then in force, and that the House and Senate journals of the twenty-third General Assembly of the State of Missouri establish said failure to comply with said constitutional requirements; and,

moreover, that said pretended law is, and ever has been, inoperative, null, and void, because the said pretended law is repugnant to sections XXV, XXVII, and XXXII of article IV of the constitution of Missouri, adopted and in force from and after the 4th day of July, 1865.

14th plea. For further answer to the second count of plaintiff's amended and consolidated petition defendant avers that notwithstanding the fact that there are, and have been since 1878, on file in case No. 1153, herein consolidated, the following-described instruments, which plaintiff pretends and alleges to be (4th) fourth maturing coupons, purporting to have been detached from bonds
23 16, 17, 18, 63, 64, 65, 66, 67, 68, 69, 70, 190, 75, 189, 81, 188, 82, 97, 187, 100, 199, & 200, which coupons were merged in a judgment which remained undisturbed by any order or mandate entered upon the records of this court until February, 1885, yet on the 24th of December, 1884, a pretended corporation, known as the First National Bank of Warsaw, by Hughes and Baker, its attorneys, filed in this court a suit against this defendant upon pretended coupons identically similar in description to those hereinbefore described, which suit is still pending against this defendant in this court.

15th plea. For further answer to the second count of plaintiff's petition defendant admits that on the 9th day of August, 1870, Wm. Dawson and Isaac Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, did cause to be made upon the records of said county court, a court of record then and at all times since said date, composed of three members, an offer that if certain conditions precedent therein set forth were accepted and complied with the county of Scotland, in the State of Missouri, would subscribe two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company in bonds of said county, and appointing one Charles Mety as trustee for said county to receive from the clerk of said court said bonds after the same might be issued, and to have the custody of the same, and as soon as the said company accepted and complied with the aforesaid conditions precedent to deliver said bonds to the treasurer or other anthorized agent of said company, but defendant avers that all of said acts of Dawson and Forgner were without authority of law, among other reasons, because the said Missouri, Iowa and Nebraska had no legal existence; because the route of said pre-
24 tended railroad was not and could not lie in or through Scotland county; because at no election, general or special, in said Scotland county held have a majority or two-thirds of the qualified voters of said county assented to any subscription of stock in or issue of bonds to said railroad company or to any other company.

Defendant avers that without any other authority or acts then as hereinbefore set forth said Dawson, during a vacation of the county court aforesaid, met with Sterling McDonald, clerk of the county court of said county, and signed, as presiding justice of Scotland county, Missouri, two hundred lithographed papers, by each of which the county of Scotland purported to acknowledge itself indebted to the Missouri, Iowa and Nebraska Railway Company in

the sum of one thousand dollars, with eight per cent. interest thereon, evidenced by coupons thereto annexed; that among said coupons so annexed to said pretended bond then signed by said Dawson was each of the coupons in the aforesaid count of plaintiff's petition described; that said Sterling McDonald at the same time attested each of said pretended bonds over his signature as clerk of the county court of Scotland county, Missouri, and then made upon each of said pretended bonds the impression of a seal, purporting to be the "seal of Scotland county, Missouri," which seal, though never adopted by any order entered upon the records of said court, had previously been used as the seal of said county court. Defendant admits that the said McDonald thereafter delivered said pretended bonds and coupons to one Charles Mety, who receipted for the same as trustee of Scotland county, Missouri, about the first of September, 1871, and who long thereafter delivered same to certain persons, purporting to be president and treasurer
25 of the Missouri, Iowa and Nebraska Railway Company, but defendant avers that all of said acts and orders were without authority of law and void, and that about the 11th day of September, 1871, while said Mety still had in his custody the aforesaid pretended bonds and coupons, Levi J. Wagner and other citizens and tax-payers of said county of Scotland, in the State of Missouri, instituted as plaintiffs, in the circuit court of said county of Scotland, in the State of Missouri, a suit against the said Charles Mety, William Dawson, David B. Cooper, and James E. Marquis, justices of the county court of said county, James S. Fullerton, and the Missouri, Iowa and Nebraska Railway Company, as defendants, the object and purpose of which suit was to enjoin the said Mety from delivering said bonds or coupons, or any part thereof, to the Missouri, Iowa and Nebraska Railway Company or to any company, party, or person; to require the said Mety to deliver the same into court to be cancelled by said court, and to restrain and enjoin said justices of the county court of said county from appointing any agent to have, possess, or deliver said bonds or coupons, or to act in the board of said railroad company, and to restrain said Fullerton, as treasurer of said county, from paying any of said pretended bonds or coupons out of any money coming to or in his hands as treasurer of said county, and to have said bonds and coupons and all orders of the said county court aforesaid relating thereto null and void; that said injunction was, by E. V. Wilson, judge of the circuit court of said county of Scotland, in the State of Missouri, duly granted on the twenty-first of September, 1871, and said Mety and others enjoined and restrained, in accordance with the prayer of the petition as hereinbefore set forth, and said Mety especially enjoined and restrained, from delivering any of said bonds or coupons to any person or corporate body, all of which said Mety and each
26 of the other defendants then had due notice, and which said injunction was made perpetual upon the final hearing thereof, as hereinafter stated.

Defendant avers that among the bonds and coupons in said suit of Levi J. Wagner *et al. v.* Charles Mety *et al.* involved and therein

declared void was each of the coupons in the — count of plaintiff's petition described and each of the bonds from which said coupons were detached.

Defendant avers that after the commencement of the aforesaid suit of Levi J. Wagner *et al. v.* Charles Mety *et al.*, and after each of the defendants therein had been served with process and voluntarily appeared therein and filed in said court their answer to said petition of Levi J. Wagner and others, therein filed, a change of venue was granted in said cause from the county of Scotland aforesaid to the county of Shelby, in said State, and from the circuit court of said Scotland county to the circuit court of Shelby county, in said State of Missouri; and the plaintiffs having filed an amended petition therein for the purposes and objects hereinbefore shown to have been set forth in the original petition, and in addition thereto praying that the successors in office of said justices of the county court and of said treasurer of the county of Scotland might, as well as said defendants, be forever restrained from making any orders or doing any acts tending to give currency or validity to either of said pretended bonds or coupons, defendant avers that the defendants in said cause of Levi J. Wagner and others against Charles Mety and others, after having filed their answer to said amended petition, withdrew said answer by leave of court, and thereupon the defend-
27 ant, The Missouri, Iowa and Nebraska Railway Company, filed a demurrer to said amended petition, and the same coming on to be heard by the court was overruled by said court; and the other defendants having failed to answer or demur to said amended petition of Levi J. Wagner and others, the same was taken as confessed as to them, and the defendant, The Missouri, Iowa and Nebraska Railway Company, having declined to make further answer, but electing to stand upon the demurrer aforesaid, final judgment was rendered in the cause, and it was by the court adjudged that said Charles Mety be restrained and enjoined from delivering to the Missouri, Iowa and Nebraska Railway Company or to any other company or persons the bonds or coupons in said suit involved (and including the coupons herein involved and the pretended bonds to which they were originally annexed); and it was further adjudged by said circuit court of Shelby county, in the State of Missouri, that said Charles Mety produce any and all of said bonds and coupons then in his possession before said court on the first day of the May term, A. D. 1875, of said circuit court that the same might be canceled; and it was further considered, adjudged, and decreed by said court that the defendant, The Missouri, Iowa and Nebraska Railway Company, be restrained and enjoined from recovering from said Charles Mety, or from any other person acting as agent of said Scotland county, the bonds or coupons aforesaid or either of same; and it was further adjudged and decreed by said circuit court of Shelby county that all the bonds and coupons aforesaid (including each of the coupons herein involved) were null and void by reason of the want of legal authority or power in the county court of Scotland county aforesaid to subscribe

to the capital stock of said Missouri, Iowa and Ne-
28 braska Railway Company or to issue bonds in payment thereof; and it was further adjudged, ordered, and decreed that said Missouri, Iowa and Nebraska Railway Company cause all of the said bonds and coupons in the aforesaid amended petition of said Levi J. Wagner described and then in the possession of said company, its servants, employés, agents, or attorneys, to be produced before said court on the first day of the May term thereof, in the year 1875; and it was further considered and adjudged by said court that said plaintiffs recover their costs therein. One of said defendants, to wit, The Missouri, Iowa, and Nebraska Railway Company, moved the court to set aside the finding and judgment in said cause and grant defendants a new trial thereon, which motion was by said court overruled and a new trial therein refused, the final judgment in favor of said plaintiffs and against said defendants in said cause, as above recited, standing as the final judgment in said cause and unreversed by any court of competent jurisdiction of all the matters and things in said suit involved, which said suit was by the defendants taken by appeal from said circuit court of Shelby county, Missouri, to the supreme court of the State of Missouri, and the judgment and orders of said circuit court of Shelby county, Missouri, in said cause of Levi J. Wagner and others *v.* Charles Mety and others made final by the judgment and decision of said supreme court; and the defendant herein avers the fact to be that said bonds and coupons have never passed into circulation; that the said Mety delivered said bonds and coupons, in defiance of the orders and decrees aforesaid, to certain persons, claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri, after notice of the application for injunction
aforesaid and after notice of the granting of a temporary
29 injunction therein; that plaintiff in this cause received the pretended coupons in this cause involved after each of said coupons in the second count of this suit involved had been detached from the pretended bond to which it was originally annexed and after the date of maturity of each of said coupons and after the judgments hereinbefore recited as having been rendered in said case of Levi J. Wagner and others against Charles Mety and others by courts having full jurisdiction of all the questions therein decided. Defendant avers that plaintiff thus received each of said coupons in said second count of his amended and consolidated petition described without having given any good or valuable consideration for either of said coupons and with full actual notice of every fact in the defendant's fourth plea set forth.

Defendant avers that plaintiff and the person from whom plaintiff received the said coupons and each and every person or corporate body in whose possession said coupons or either of them has ever been held received same without having given value therefor and with full actual notice of every fact in this defendant's fourth plea set forth.

And especially does defendant aver that at the date of the institution of this suit plaintiff was not the owner of either of the several coupons in his said second count described, excepting the following-described coupons, fourth, fifth, and seventh coupons, purporting to have been detached from bonds numbered 4, 10, 11, 12, 38, 78, 79, 80, 88, 90, 92, 135, 136, 137, 160, 161, 167, 166; that each of the remaining coupons in said count declared upon were, at the date of institution of this suit, owned severally or in common by the First National Bank of Warsaw, Illinois, Thomas B. Hill, who was then a citizen
30 of the State of Missouri; Henry Hill, James R. Dodge, George Knox and Emily Knox, his wife, born Hill; Charles H. Mellen, Edwin Manning, F. M. Drake, and James Fitzhenry, all of whom, excepting said First National Bank, were connected by blood or marriage; and defendant avers that said several parties herein named, together with other unknown persons, confederated and conspired together, in the years 1870 and 1871, to obtain possession, and did obtain possession, of the several bonds and coupons hereinbefore described, in violation of law, by causing said Mety to deliver said bonds and coupons to the pretended corporation known as the Missouri, Iowa and Nebraska Railway Company, of which company each of said parties was either an officer or stockholder; that said bonds and coupons thence passed, without consideration, to a company known as the Iowa Construction Company, of which company and of which bank aforesaid each of said parties was either an officer or stockholder, and thence, without consideration, were divided among said parties herein named, who caused certain brokers, upon their account, to make mock sales thereof to William Hill, who became the holder of same, as the agent and for account of said respective parties, without having paid value therefor, and that said bonds have been under the control of said several parties since the time when they left the hands of said Mety.

Wherefore, having fully answered, defendant prays to be dismissed with costs.

HENRY A. CUNNINGHAM,
Attorney for Defendant.

And afterwards, to wit, on the 20th day of March, A. D.
31 1885, the following, among other, proceedings were had and appear of record in said court, to wit:

Leave Given to Dismiss as to Certain Coupons.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153 & 1287.

Now comes the plaintiff, by attorney, and by leave of court dismisses this cause as to all coupons described in the petition as detached from the following-numbered bonds: 19, 20, 21, 58, 59, 60, 61, 62, 118, 119, 120, 122, 72, 73, 74, 87, 148, 149, 150, 151, 152, 32, 33, 34, 153, 154, 155, 156, 157, and coupons as described numbered four detached from bonds numbered 63, 64, 65, 66, 67, 68, 69, 70, 190, 75, 189, 81, 188, 82, 97, 98, & 187.

And afterwards, to wit, on the 24th day of March, A. D. 1885, there was filed in said cause a replication to third amended answer, which is in words and figures following, to wit:

Replication.

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1885.

WILLIAM HILL, Plaintiff, *vs.* SCOTLAND COUNTY, Defendant.

Plaintiff, for replication to the second defense of defendant's third amended petition, denies each and every allegation thereof.

Plaintiff, for replication to the third defense of defendant's
32 third amended answer, says that he has no knowledge or information sufficient to form a belief as to whether the order set forth in said third defense was ever made by the county court of Scotland county, or whether said bonds were issued without any other order or authority.

For further replication to said third defense plaintiff says that he has no knowledge or information sufficient to form a belief as to whether the Alexandria and Bloomfield Railroad Company located its route beyond the limits of Scotland county.

For further replication to said third defense plaintiff says that defendant did subscribe to the capital stock of the Missouri, Iowa and Nebraska Railroad Company, and that the conditions and terms thereof were complied with by said railroad company.

For further replication to said third defense plaintiff says that there was a corporation known as the Alexandria and Nebraska City Railway Company, which was formerly the Alexandria and Bloomfield Railroad Company, and there was a lawful corporation known as the Iowa Southern Railway Company, and the Missouri, Iowa and Nebraska Railway Company was and is a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, the same being the Alexandria and Bloomfield Railroad Company and Iowa Southern Railway Company consolidated and the route of which at the date of the subscription and issuance of said bonds lay and still lies through Scotland county, and plaintiff says that said consolidated road was under the law entitled to all the powers, rights, privileges, and immunities which belonged to or rested upon either of the companies making such consolida-
33 tion; that among other powers, rights, and privileges belonging to said Alexandria and Bloomfield, afterwards, by change of name, Alexandria and Nebraska City Railway Company, conferred by the act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9, 1857, was the right to have defendant subscribe to its capital stock and issue bonds to pay for the same, and that the bonds from which the coupons sued on were detached were issued by authority of said act and under and pursuant to an order of the county court of said county in payment of its suscription previously made to the capital stock of said consolidated road.

Plaintiff, for further replication to said third defense, says that he has no knowledge or information sufficient to form a belief as to when said bonds were printed, signed, and delivered other than such knowledge and information as he received from the recitals of said bonds, and that said bonds recite upon their face that they were issued September 1st, 1870, and countersigned and delivered September 20th, 1871.

For further replication to said third defense plaintiff denies that he received the coupons sued on and became the owner thereof after said coupons had been detached from the bonds with which they were issued, or that he or those under whom he holds said coupons acquired the same without consideration, or that he or those under whom he claims had notice of the matters pleaded in said third defense; but, on the contrary, plaintiff avers that he and those under whom he claims title to said coupons purchased the same for value before maturity, relying upon the declarations in the bonds to which the said coupons were attached and without notice of any of
34 the matters pleaded in defendant's said third amended answer.

Plaintiff, for replication to the sixth defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the seventh defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the eighth defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the ninth defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the tenth defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the eleventh defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the twelfth defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the thirteenth defense in defendant's third amended answer, denies each and every allegation thereof.

Plaintiff, for replication to the fourteenth defense in defendant's third amended answer, says that said fourth coupons — detached from bonds Nos. 63, 64, 65, 66, 67, 68, 69, 70, 190, 75, 189, 81, 188, 82, 97, 98, and 182; that as to the other facts stated in said fourteenth
35 defense he has no knowledge or information sufficient to form a belief.

Plaintiff, for replication to the fifteenth defense of defendant's third answer, says that the route of said railroad could and did lie through Scotland county, and that said road was built and is being operated through said county.

Plaintiff, for further replication to said fifteenth defense, says that he has no knowledge or information sufficient to form a belief as to whether Levi J. Wagner and other citizens of Scotland county named in said fifteenth defense as plaintiffs instituted suit in the circuit court of Scotland county against Charles Mety and the other persons and corporations named in said fifteenth defense as defendants, for the purposes in said fifteenth defense set forth and de-

scribed, or whether any proceedings were had or orders made or judgment rendered in said cause, either in said circuit court or any other court, or whether such proceedings, judgment, and orders were appealed from to the supreme court of Missouri, or whether, if so appealed, the same were by said supreme court affirmed; wherefore plaintiff demands strict proof of all said allegations.

For further replication to said fifteenth defense of said third amended answer plaintiff denies that said bonds and coupons have never passed into circulation; and plaintiff says not only did the bonds from which the coupons sued on were detached pass into circulation, but that from year to year since the date of said bonds defendant has caused the necessary taxes to be collected in said county to pay the coupons on said bonds, and defendant paid all the coupons on said bonds which matured previously to the coupons here sued on.

36 And, for further replication to the fifteenth defense of defendant's third amended answer, plaintiff says that he has no knowledge or information sufficient to form a belief as to whether said Mety delivered said bonds and coupons in defiance of the orders and decrees in said fifteenth count mentioned to certain persons claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri or elsewhere, after notice of an application for injunction or after notice of the granting of a temporary injunction therein; wherefore he demands strict proof thereof.

Plaintiff says that if any decree of the circuit court of Shelby county was ever made, such as is stated in said plea, that the same was so made by said court after this court had decided and held said bonds to be valid and binding securities; and that if said supreme court of the State of Missouri has ever affirmed such decree of the said circuit court of Shelby county it was so held and affirmed after the Supreme Court of the United States had affirmed the judgment of this court in the case of Scotland County *vs.* Thomas, whereby said bonds and coupons were held and adjudged to be valid, binding, and legal obligations of the said county of Scotland, and after that this plaintiff, relying upon said decisions of this court as affirmed by the said Supreme Court of the United States had purchased in good faith, for a valuable consideration, the coupons sued on in this case.

For that plaintiff avers that on the — day of —— A. D. 187–, Joseph T. Thomas, of the State of Pennsylvania, being the owner and holder of a number of coupons detached from a part of

37 the two hundred bonds issued by Scotland county aforesaid and referred to and mentioned in defendant's answer as "lithographed papers" and "pretended bonds," brought suit in this court against defendant herein to recover the amount due upon said coupons.

Plaintiff avers that the coupons in said cause of Thomas *vs.* Scotland County were detached from the same bonds and series of bonds as are the coupons sued upon in this case, and that in said cause the question of the validity of said bonds was directly called in question

by this defendant in its defense to said suit and the authority of the said county court of Scotland county to subscribe to the stock of the said Missouri, Iowa and Nebraska Railway Company and to issue its bonds in payment for the stock so subscribed to said consolidated company without a precedent vote was particularly called in question; that after maturely considering said questions in the light of the decisions of the supreme court of the State of Missouri and before the circuit court of Shelby county had passed upon the validity of said bonds and overruled the former decisions of the supreme court of the State of Missouri and of the United States upon similar questions, and before there was any order, judgment, or decree of any of the State courts of the State of Missouri holding said bonds void and of none effect, this court rendered its decision in said cause, giving judgment for the plaintiff and affirming the validity and binding force and effect of said bonds and coupons; and that the Supreme Court of the United States affirmed the judgment of this court in said cause of Thomas *vs.* Scotland County before the supreme court of the State of Missouri had passed upon the question of the validity of said bonds in said case of Wagner *et al. vs.* Mety *et al.*

38 So plaintiff denies that he or those under whom he claims became the owners of the coupons in suit with notice that they were invalid and void; denies that he or those under whom he claims became the owners of the coupons sued on without paying value therefor, or after the same had become due and were detached from the bonds whereon they had been issued.

But plaintiff says he and those through whom he held said coupons were induced to purchase and did purchase said bonds and coupons now in suit relying upon the decision and judgment of this court and of the supreme court touching their validity as announced and declared in the judgment of this court in the cases of Thomas *vs.* Scotland County and of Hill *vs.* Scotland County and other cases upon the same coupons, and upon the judgment and opinion of the Supreme Court of the United States in said case of Thomas *vs.* Scotland, reported in 94th U. S. Supreme Court Reports, 682, as Scotland County *vs.* Thomas.

For further replication to the fifteenth defense of defendant's third amended answer plaintiff denies that he received the coupons sued on and became the owner thereof after said coupons had been detached from the bonds with which they had been issued, or that he or those under whom he holds said coupons acquired the same without consideration, or that he or those under whom he claims had notice of the matters pleaded in said fifteenth defense; but, on the contrary, plaintiff avers that he and those under whom he claims title to said coupons purchased the same for value before maturity, relying upon the declarations in the bonds to which the said coupons were attached, and without notice of any of the matters pleaded in defendant's said third amended answer.

39 For further replication to the fifteenth defense of defendant's answer plaintiff denies that at the date of the institution of this suit the parties therein named severally or in common

owned the coupons sued on, or that they were connected by blood or marriage; denies that the persons therein named or any of them, together or with other persons, confederated or conspired to obtain possession or did obtain possession of said bonds and coupons, in violation of law, by causing said Mety to deliver said bonds and coupons to said railway company; denies that said bond passed without consideration to the Iowa Construction Company; denies that said persons were officers or stockholders of said bank or construction company, or that said bonds were without consideration divided among said parties named, or that such sales of said bonds were made to William Hill without his having paid value therefor, or that said bonds have been under the control of parties since they left the hands of Mety.

BAKER & HUGHES AND
J. H. OVERALL, *Att'ys for Pl'ff.*

And afterwards, to wit, on the 12th day of October, A. D. 1885, at a regular stated term of said circuit court, the following further proceedings were had and appear of record in said case, to wit:

Cases Consolidated for Purpose of Trial.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153 & 1287.

FIRST NATIONAL BANK OF WARSAW, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 2456.

40 CHARLES H. MELLEN, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 2482.

Ordered by the court that the above and foregoing cases, Nos. 1153 & 1287 (consolidated) and 2456 and 2482, be, and they are, consolidated for the purposes of trial.

And afterwards, to wit, on the 12th day of October, A. D. 1885, the following further proceedings were had and appear of record in said court, to wit:

Case Called. Jury Sworn. Case Partly Heard.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153 & 1287.

Now come the parties, by their respective attorneys, the plaintiff by Baker & Hughes, J. H. Overall, and Frank Hagerman, and the defendant by H. A. Cunningham and C. H. Krum, and this case being regularly called for trial and both parties being ready, it is ordered that a jury come; and thereupon come said jury, to wit,

Henry W. Chandler, Alvin Moore, George W. Lord, J. R. Shorkley, Frank Carter, Samuel S. Stanton, C. D. Harper, W. W. Stead, W. J. Pennington, Adolph Klauber, William F. Cox, and C. B. Clarke, twelve good and lawful men duly empaneled and sworn to well and truly try the issues joined herein; and the plaintiff now dismisses, without prejudice, as to the following exhibits: Coupons numbers 6 and 7 from bonds numbers 38, 39, 40, 44, 45, 46, 71, 76, 77, 78, 79, 80, 50, 51, 52, 95, 96, 107, 108, 185, & 186; coupons numbers 2 and 3 from bonds numbers 53, 54, and 55, and coupon number 3
41 from bonds 128, 129, & 130 and coupon number 6 from bond number 42; and thereupon the evidence was partly heard, but, not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, on the 13th day of October, A. D. 1885, the following further proceedings were had and appear of record in said case, to wit:

Case Further Heard.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153 & 1287.

Now again come the parties, by their attorneys, and also come the jury herein, as on yesterday, and the hearing of this cause was resumed, but, not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, on the 14th day of October, A. D. 1885, the following further proceedings were had and appear of record in said court, to wit:

Judgment.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153 & 1287.

Now again come the parties, by their attorneys, the plaintiff by Baker & Hughes, J. H. Overall, and Frank Hagerman, and the defendant by Henry A. Cunningham and Chester H. Krum, and also come the jury, to wit, Henry W. Chandler, Alvin Moore, George W. Lord, J. R. Shorkley, Frank Carter, Samuel S. Stanton, C. D.
42 Harper, W. W. Stead, W. J. Pennington, Adolph Klauber, William F. Cox, and C. B. Clark, who, after hearing the evidence and arguments of counsel and receiving the charge of the court, return the following verdict:

"We, the jury, find for plaintiff and assess his damages at $46,944.00.

H. W. CHANDLER, *Foreman.*"

It is therefore considered by the court that the plaintiff, William Hill have and recover of the defendant, Scotland County, as well the said sum of forty-six thousand nine hundred and forty-four dollars, the damages aforesaid by the jury assessed, as also the costs herein expended, and have thereof execution.

MEMORANDUM.—This judgment bears seven per cent. interest per annum.

And afterwards, to wit, on the 31st day of October, A. D. 1885, the following further proceedings were had and appear of record in said court, to wit:

Bill of Exceptions Filed.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153 & 1287.

Now comes the defendant, by attorney, and presents to the court its bill of exceptions, which is allowed, signed, and ordered to be filed and made part of the record herein.

Said bill of exceptions is in the words and figures following, to wit:

43 *Bill of Exceptions.*

In the Circuit Court of the United States for the Eastern District of Missouri. September Term, 1885.

WILLIAM HILL, Plaintiff,
vs.
THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant. } No. 1153 and 1287. Consolidated.

Be it remembered that upon the trial of the above-entitled cause, begun upon the 13th of October, 1885, the following proceedings were had:

A jury of twelve men, after having been sworn to answer questions, were examined by plaintiff's counsel and accepted by plaintiff. Thereupon defendant, having examined said jurors, challenged one of said jurors, to wit, E. E. Souther, whose place having been filled by an additional juror, said additional juror was examined by plaintiff and accepted, and thereafter examined by defendant and accepted.

Thereupon the court stated: "I suggest, as counsel seem to speak of one plaintiff, that I shall order a consolidation of the three cases for the purpose of trial, viz., the case No. 1153 and 1287 of William Hill *vs.* Scotland County, case 2456, First National Bank of Warsaw against Scotland County, and case 2482, Charles H. Mellen *vs.* Scotland County, so that if you wish to ask about any of the other plaintiffs you may do so." Thereupon defendant's counsel excepted to said consolidation of said cases for the purpose of the

trial before the same jury already accepted for the trial of
44 said case of William Hill *vs.* Scotland County because each of said cases involved separate and different coupons, pleadings, and issues, entitling the said defendant to separate trials, and violated the right of defendant to a separate trial of this cause.

The record in the case of C. H. Mellen against Scotland County is in the words and figures following, to wit:

Record in Case of C. H. Mellen vs. Scotland Co.

Petition.

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, A. D. 1885.

CHARLES H. MELLEN, Plaintiff,
against
THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant. } No. 2482.

Plaintiff states that he is a resident and citizen of the State of Iowa, and that defendant is an organized county of the State of Missouri and a citizen of said State.

Plaintiff further states that he is the holder and owner of the (17) seventeen (13th) thirteenth maturing coupons herewith filed and detached from bonds number 16, 17, 18, 104, 105, 106, 9, 25, 26, 27, 35, 36, 28, 42, 109, 110, & 111, each bond being for one thousand dollars.

Plaintiff further states that said bonds were of a series of two hundred of the same denomination, all of which were issued and delivered by said county of Scotland to the Missouri, Iowa, and Nebraska Railway Company in payment for stock which the said
45 county had subscribed to the said railway company under and by virtue of an act of the General Assembly of the State of Missouri entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857.

Plaintiff further states that said General Assembly of said State of Missouri afterwards passed and approved an amendatory act thereto, entitled An act to amend An act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clark county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, Atchison county, Missouri, and also authorizing said company to accept all or any of the sections of this act, the same to be binding on said railroad company, which was duly approved February 19th, 1866.

Plaintiff further states that thereafter said Alexandria and Bloomfield Railroad Company duly accepted the first section of said amendatory act and changed its incorporate name to that of the Alexandria and Nebraska City Railroad.

Plaintiff further states that said Alexandria and Nebraska City Railroad Company afterwards, to wit, on or about the — day of May, A. D. 1870, under authority of law duly consolidated its capital stock with that of the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa; that by the articles of said consolidation the name of said consolidated company became and was the Missouri, Iowa and Nebraska Railway Company, the same company to which said defendant made the said subscription of stock.

46 Plaintiff further states that after said county had issued and delivered said bonds in payment of the subscription of stock aforesaid the said county caused to be levied and collected the next year thereafter a tax sufficient to meet and pay off the first year's interest, and out of said tax did pay off said interest, and did levy and collect taxes in other succeeding years and appropriate the same in payment of such accruing interest, and did buy in and compromise a large number of said bonds, and did compromise a large number and issue other bonds of said county in payment thereof; that said county took and retained the said stock and voted it by its duly authorized agent at the annual and other meetings of said railway company, and ever retained and fully appropriated said stock to its own use and benefit, and in every way recognized said subscription and the said bonds as valid obligations of said county.

Plaintiff further states that said coupons are payable at the Farmers' Loan and Trust Company's bank in the city and State of New York.

That said coupons are each for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1883; that said coupons are now due and unpaid. Plaintiff says that the defendant has made no provision for the payment of said coupons, nor has it now nor has it at any time had any money in the said Farmers' Loan and Trust Company's bank subject to the payment of said coupons or any part thereof.

Second Count.

Plaintiff further states that he is the holder and owner of the (1) one (12th) twelfth maturing coupons herewith filed and detached from bond number nine (9), said bond being for one thousand dollars.

47 Plaintiff further states that said bonds were of a series of two hundred of the same denomination, all of which were issued and delivered by said county of Scotland to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county had subscribed to the said railway company under and by virtue of an act of the General Assembly of the State of Missouri, entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857.

Plaintiff further states that said General Assembly of said State of Missouri afterwards passed and approved an amendatory act thereto

entitled An act to amend an act entitled an act to incorporate the Alexandria and Bloomfield Railroad company, approved February 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clark county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, Atchison county, Missouri, and also authorizing said company to accept all or any of the sections of this act, the same to be binding on said railroad company, which was duly approved February 19th, 1866.

Plaintiff further states that thereafter said Alexandria and Bloomfield Railroad Company duly accepted the first section of said amendatory act and changed its incorporate name to that of the Alexandria and Nebraska City railroad.

Plaintiff further states that said Alexandria and Nebraska City Railroad Company afterwards, to wit, on or about the — day of May, A. D. 1870, under authority of law, duly consolidated its capital stock with that of the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa; that by the articles of said consolidation the name of said consolidated com-
48 pany became and was the Missouri, Iowa and Nebraska Railway Company, the same company to which said defendant made the said subscription of stock.

Plaintiff further states that after said county had issued and delivered said bonds in payment of the subscription of stock aforesaid the said county caused to be levied and collected the next year thereafter a tax sufficient to meet and pay off the first year's interest, and out of said tax did pay off said interest and did levy and collect taxes in other succeeding years and appropriate the same in payment of such accruing interest, and did buy in and compromise a large number of said bonds, and did compromise a large number and issue other bonds of said county in payment thereof; that said county took and retained the said stock and voted it, by its duly authorized agent, at the annual and other meetings of said railway company, and ever retained and fully appropriated said stock to its own use and benefit, and in every way recognized said subscription and the said bonds as valid obligations of said county.

Plaintiff further states that said coupons are payable at the Farmers' Loan and Trust Company's bank, in the city and State of New York.

That said coupons are each for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1882; that said coupons are now due and unpaid. Plaintiff says that the defendant has made no provision for the payment of said coupons, nor has it now nor has it at any time had any money in the said Farmers' Loan and Trust Company's bank subject to the payment of said coupons or any part thereof.

Third Count.

49 Plaintiff further states that he is the holder and owner of the five (5) fourteenth (14th) maturing coupons herewith filed and detached from bonds numbers 28, 42, 109, 110, and 111, each bond being for one thousand dollars.

Plaintiff further states that said bonds were of a series of two hundred of the same denomination, all of which were issued and delivered by said county of Scotland to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county had subscribed to the said railway company under and by virtue of an act of the General Assembly of the State of Missouri, entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857.

Plaintiff further states that said General Assembly of said State of Missouri afterwards passed and approved an amendatory act thereto entitled An act to amend an act entitled an act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, Clark county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, Atchison county, Missouri, and also authorizing said company to accept all or any of the sections of this act, the same to be binding on said railroad company, which was duly approved February 19th, 1866.

Plaintiff further states that thereafter said Alexandria and Bloomfield Railroad Company duly accepted the first section of said amendatory act and changed its incorporate name to that of the Alexandria and Nebraska City railroad.

50 Plaintiff further states that said Alexandria and Nebraska City Railroad Company afterwards, to wit, on or about the — day of May, A. D. 1870, under authority of law, duly consolidated its capital stock with that of the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa; that by the articles of said consolidation the name of said consolidated company became and was the Missouri, Iowa and Nebraska Railway Company, the same company to which said defendant made the said subscription of stock.

Plaintiff further states that after said county had issued and delivered said bonds in payment of the subscription of stock aforesaid the said county caused to be levied and collected the next year thereafter a tax sufficient to meet and pay off the first year's interest, and out of said tax did pay off said interest, and did levy and collect taxes in other succeeding years and appropriate the same in payment of such accruing interest, and did buy in and compromise a large number of said bonds, and did compromise a large number and issue other bonds of said county in payment thereof; that said county took and retained the said stock and voted it, by its duly authorized agent, at the annual and other meetings of said railway company, and ever retained and fully appropriated said stock to its

own use and benefit, and in every way recognized said subscription and the said bonds as valid obligations of said county.

Plaintiff further states that said coupons are payable at the Farmers' Loan and Trust Company's bank, in the city and State of New York.

That said coupons are each for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1884; that said coupons are now due and unpaid. Plaintiff says that the defendant has made no provision for the payment of said coupons, nor has
51 it now, nor has it at any time, had any money in the said Farmers' Loan and Trust Company's bank subject to the payment of said coupons or any part thereof.

That all the coupons in said several counts amount to the sum of eighteen hundred and forty dollars; that by the laws of the State of New York, where said coupons are payable, they draw seven per cent. interest per annum from their respective dates of maturity.

Wherefore plaintiff prays judgment for said sum of eighteen hundred & forty dollars and interest thereon at the rate of seven per cent. per annum as herein stated and for costs of suit.

A. J. BAKER &
F. T. HUGHES,
Att'ys for Plaintiff.

Endorsed: "2482. Chas. H. Mellen *vs.* Scotland County. Petition. Filed Feb. 26, 1885. A. P. Selby, clerk. Baker & Hughes, att'ys for pl'ff."

Defendant's Answer.

In the Circuit Court of the United States for the Eastern District of Missouri. M'ch Term, 1885.

CHARLES H. MELLEN, Plaintiff,

vs.

SCOTLAND COUNTY, IN THE STATE OF MISSOURI, Defendant.

Now comes the defendant, by Henry A. Cunningham, its attorney, and by leave of court makes this its answer to plaintiff's petition:

52 1. For answer to the first count or cause of action in plaintiff's petition contained defendant denies each and every allegation in said count in said petition contained.

2. For further answer to said first count or cause of action in plaintiff's petition contained defendant avers that it did not make the pretended bond or either of the pretended coupons in said count described.

3. For further answer to said first count or cause of action in plaintiff's petition contained defendant avers that he is not the real party in interest prosecuting this action.

53 4. For further answer to the first count of plaintiff's — petition defendant avers that the act purporting to be an act of

the General Assembly of the State of Missouri, approved February 19, 1866, entitled "An act to amend an act to incorporate the Alexandria and Bloomfield Railroad Company," approved February, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clark county, Missouri, to Nebraska, a city in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri; and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company, never became a law; more especially that said act never became a law in conformity to the twenty-third and twenty-fourth sections of the IV article of the constitution of the State of Missouri, then in force, and that the house and senate journals of the twenty-third General Assembly of the State of Missouri establish said failure to comply with said constitutional requirements, and, moreover, that said pretended law is and ever has been inoperative, null, and void, because the said pretended law is repugnant to sections XXV, XXVII, and XXXII of article IV of the constitution of Missouri, adopted and in force from and after the 4th day of July, 1865.

54 5 *Plea.*

For further — answer to the first count of plaintiff's — petition defendant admits that on the 9th day of August, 1870, Wm. Dawson and Isaac Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, did cause to be made upon the records of said county court, a court of record then and at all times since said date, composed of three members, an offer that if certain conditions precedent therein set forth were accepted and complied with the county of Scotland, in the State of Missouri, would subscribe two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company in bonds of said county, and appointing one Charles Mety as trustee for said county to receive from the clerk of said court said bonds after the same might be issued and to have custody of the same, and as soon as the said company accepted and complied with the aforesaid conditions precedent to deliver said bonds to the treasurer or other authorized agent of said company.

Defendant avers that all said acts were without authority of law, as hereinafter shown.

Defendant avers that without any other authority or acts than as hereinbefore set forth said Dawson, during a vacation of the county court aforesaid, met with Sterling McDonald, clerk of the county court of said county, and signed, as presiding justice of Scotland county, Missouri, two hundred lithographed papers, by each of which the county of Scotland purported to acknowledge itself indebted to the Missouri, Iowa and Nebraska Railway Company in the sum of one thousand dollars, with eight per cent. interest thereon, evidenced by coupons thereto annexed; that among said coupons so annexed to said pretended bonds then signed by said Dawson was each of the coupons in the aforesaid first count of plaintiff's — petition described;

that said Sterling McDonald at the same time attested each of said pretended bonds over his signature as clerk of the county court of Scotland county, Missouri, and then made upon each of said pretended bonds the impression of a seal purporting to be the "seal of Scotland county, Missouri," which seal, though never adopted by any order entered upon the records of said court, had previously been used as the seal of said county court. Defendant admits that the said McDonald thereafter delivered said pretended bonds and coupons to one Charles Mety, who receipted for the same as trustee of Scotland county, Missouri, about the first of September, 1871, and who long thereafter delivered same to certain persons, purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company, but defendant avers that all of said acts and orders were without authority of law and void, and that about the 11th day of September, 1871, while said Mety still had in his custody the aforesaid pretended bonds and coupons, Levi J. Wagner and other citizens and tax-payers of said county of Scotland, in the State of Missouri, instituted, as plaintiffs, in the circuit court of said county of Scotland, in the State of Missouri, a suit against the said Charles Mety, William Dawson, David B. Cooper, and James E. Marquis, justices of the county court of said county; James S. Fullerton, and the Missouri, Iowa and Nebraska Railway Company, as defendants, the object and purpose of which suit was to enjoin the said Mety from delivering said bonds or coupons or any part thereof to the Missouri, Iowa and Nebraska Railway Company, or to any company, party, or person, to require the said Mety to deliver the same into court to be cancelled by said court, and to restrain and enjoin said justices of the county court of said county from appointing any agent to have, possess, or deliver said bonds or coupons, or to act in the board of said railroad company, and to restrain said Fullerton, as treasurer of said county, from paying any of said pretended bonds or coupons out of any money coming to or in his hands as treasurer of said county, and to have said bonds and coupons and all orders of the said county court aforesaid relating thereto declared null and void; that said injunction was, by E. V. Wilson, judge of the circuit court of said county of Scotland, in the State of Missouri, duly granted on the twenty-first of September, 1871, and said Mety and others enjoined and restrained in accordance with the prayer of the petition as hereinbefore set forth, and said Mety especially enjoined and restrained from delivering any of said bonds or coupons to any person or corporate body; all of which said Mety and each of the other defendants then had due notice, and which said injunction was made perpetual upon the final hearing thereof as hereinafter stated.

Defendant avers that among the bonds and coupons in said suit of Levi J. Wagner *et al. v.* Charles Mety *et al.* involved and therein declared void was each of the coupons in the first count of plaintiff's petition described, and each of the bonds from which said coupons were detached.

Defendant avers that after the commencement of the aforesaid suit of Levi J. Wagner *et al. v.* Charles Mety *et al.*, and after each of

the defendants therein had been served with process and voluntarily appeared therein and filed in said court their answer to said petition of Levi J. Wagner and others therein filed, a change of venue was granted in said cause from the county of Scotland aforesaid to the county of Shelby, in said State, and from the circuit court of said Scotland county to the circuit court of Shelby county, in said State of Missouri, and the plaintiffs having filed an amended petition therein for the purposes and objects hereinbefore shown to have been set forth in the original petition, and in addition thereto praying that the successors in office of said justice of the county court and of said treasurer of the county of Scotland might, as well as said defendants, be forever restrained from making any orders or doing any acts tending to give currency or validity to either of said pretended bonds or coupons. Defendant avers that the defendants in said cause of Levi J. Wagner and others against Charles Mety and others, after having filed their answer to said amended petition,
55 withdrew said answer by leave of court, and thereupon the defendant, The Missouri, Iowa and Nebraska Railway Company, filed a demurrer to said amended petition, and the same, coming on to be heard by the court, was overruled by said court; and the other defendants having failed to answer or demur to said amended petition of Levi J. Wagner and others, the same was taken as confessed as to them, and the defendant, The Missouri, Iowa and Nebraska Railway Company, having declined to make further answer, but electing to stand upon the demurrer aforesaid, final judgment was rendered in the cause, and it was by the court adjudged that said Charles Mety be restrained and enjoined from delivering to the Missouri, Iowa and Nebraska Railway Company or to any other company or persons the bonds or coupons in said suit n-i volved (and including the coupons herein involved and the pretended bonds to which they were originally annexed); and it was further adjudged by said circuit court of Shelby county, in the State of Missouri, that said Charles Mety produce any and all of said bonds and coupons then in his possession before said court on the first day of the May term, A. D. 1875, of said circuit court that the same might be canceled; and it was further considered, adjudged, and decreed by said court that the defendant, The Missouri, Iowa and Nebraska Railway Company, be restrained and enjoined from recovering from said Charles Mety or from any other person acting as agent of said Scotland county the bonds or coupons aforesaid or either of the same; and it was further adjudged and decreed by said circuit court of Shelby county that all the bonds and coupons aforesaid (including each of the coupons herein involved) were null and void by reason of the want of legal authority or power in the county court of Scotland county aforesaid to subscribe to the capital stock of said Missouri, Iowa and Nebraska Railway Company or to issue bonds in payment thereof; and it was further adjudged, ordered, and decreed that said Missouri, Iowa and Nebraska Railway Company cause all of the said bonds and coupons in the aforesaid amended petition of said Levi J. Wagner described and then in the possession of said company, its servants, employés, agents, or attorneys, to be produced

before said court on the first day of the May term thereof, in the year 1875; and it was further considered and adjudged by said court that said plaintiffs recover their costs therein. One of said defendants, to wit, The Missouri, Iowa and Nebraska Railway Company, moved the court to set aside the finding and judgment in said cause and grant defendants a new trial thereon, which motion was by said court overruled and a new trial therein refused, the final judgment in favor of said plaintiffs and against said defendants in said cause as above recited standing as the final judgment in said cause and unreversed by any court of competent jurisdiction of all the matters and things in said suit involved, which said suit was by the defendants taken by appeal from said circuit court of Shelby county, Missouri, to the supreme court of the State of Missouri, and the judgment and orders of said circuit court of Shelby county, Missouri, in said cause of Levi J. Wagner and others *v.* Charles Mety and others, made final by the judgment and decision of said supreme court; and the defendant herein avers the fact to be that said bonds and coupons have never passed into circulation; that the said Mety delivered said bonds and coupons in defiance of the orders and decrees aforesaid to certain persons claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri, after notice of the application for injunction aforesaid and after notice of the granting of a temporary injunction therein; that plaintiff in this cause received the pretended coupons in this cause involved after each of said coupons in the second count of this suit involved had been detached from the pretended bond to which it was originally annexed and after the date of maturity of each of said coupons and after the judgments hereinbefore recited as having been rendered in said case of Levi J. Wagner and others against Charles Mety and others by courts having full jurisdiction of all the questions therein decided. Defendant avers that plaintiff thus received each of said coupons in said second count of his amended and consolidated petition described without having given any good or valuable consideration for either of said coupons and with full actual notice of every fact in the defendant's fourth plea set forth.

Defendant avers that plaintiff and the person from whom plaintiff received the said coupons and each and every person or corporate body in whose possession said coupons or either of them has ever been held received same without having given value therefor and with full actual notice of every fact in this defendant's fourth plea set forth.

56 6 *Plea.*

Defendant, for further answer to said — count of plaintiff's petition, avers that on the 9th day of August, 1870, one William Dawson and one Isaac A. Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, a court of record, then and at all times thereafter composed of three members, did

cause to be entered upon the records of said court what purported to be an order of said court, in words and figures as follows, viz:

"At this day a petition was presented to the court, signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Gwynne, R. P. Wayland, and divers other persons, to the number of thirteen hundred and sixty-five, tax-payers and residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock to the Missouri, Iowa and Nebraska Railroad Company, payable in county bonds, due twenty-five years from date, bearing interest at the rate of eight per cent. per annum, the interest payable semi-annually, commencing from date of completion and of contract on the part of said railway company. Now, therefore, in consideration of the prayer of the petitioners and in pursuance and by virtue of law and the power that is given to the court to subsribe stock in said railway company, it is ordered by the court that the county of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company, payable in the bonds of said county of the denomination of one thousand dollars each, due twenty-five years from the date of issue and bearing eight per cent. per annum, the interest payable annually in the city of New York, on the terms and conditions following: One hundred thousand dollars of said bonds to be delivered to said railway company when said road shall have been graded, bridged, and tied and the track laid and the cars running through from Alexandria, Missouri, to a permanent depot located in one-half mile of the court-house in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have completed their said line of road from Memphis to the west or north line of said county and the cars running over the same through said county, provided the said railroad shall be so located as to miss the west line and strike the north line of said county, it shall do so at a point not exceeding four miles east of the northwest corner of said county; said railroad shall be so built and the cars running through as aforesaid within two years from the date of this order; otherwise this subscription shall be null and void; and it is ordered further that Henry M. Gorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company, to represent said county at the meetings of the stockholders of said company, to cast the vote of said county, and receive the dividend; and, in order that the interests of the people may be fully guaranteed, the court doth appoint as trustee Charles Mety, of said county, whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued, and to have the custody of the same; and, as soon as the said railroad company shall have complied with the stipulations above set forth, the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company, and shall at the same time receive from said treasurer or the agent of said company an equal amount in certificates of stock of

said railway company, which said certificates of stock the same trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his actions, shall be presented to the county court at the next meeting thereafter, and that said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security to be approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trustee; it is further ordered by the court that the county attorney of said county shall proceed to have said bonds printed or lithographed, and that the presiding justice of the county court of said county shall sign the same and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annexed coupons attached, and the trustee aforesaid shall, when he delivers said bonds to said railway company, detach all, any, or all coupons for interest that may have passed maturity and cancel and return the same to the treasurer of said county when his report as aforesaid is made, and shall enter upon the next maturing coupons of said bonds the date of delivery to said company, in order that said company shall receive interest only from the date they are entitled to receive said bonds; it is provided further that said railway company shall pay all the expenses of lithographing and printing said bonds.

Defendant avers that, without any other order or authority than is heretofore set forth, the said William Dawson did sign (during a vacation of said county court), as presiding justice of Scotland county court, of Missouri, two hundred lithographed papers, each of which, excepting numbers of bond and date of countersignature and delivery, was in words and figures as follows:

57 "$1,000. No. 5.

"UNITED STATES OF AMERICA.

"Eight per cent. railroad bond.

"County of Scotland. Twenty-five years.

"Know all men by these presents that the county of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa & Nebraska Railway Company, a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company (formerly Alexandria and Bloomfield Railroad Company), of the State of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company, or bearer, at the Farmers' Loan and Trust Company, New York, on the thirty-first day of December, A. D. 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually, in the city of New York, on the thirty-first day of December in each year as the same shall become

due, on the presentation of the coupon hereto annexed, this bond being issued under and pursuant to an order of the county court of said Scotland county for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri, entitled 'An act to incorporate the Alexandria and Bloomfield Railroad Company,' approved February 9, 1857.

"In testimony whereof the said county of Scotland has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name thereto, and the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court.

"This done at the town of Memphis, in the county of Scotland, in the State of Missouri, this first day of September, A. D. 1870.

"WILLIAM DAWSON,

"*Presiding Justice of the County Court of Scotland County, Mo.*

"Attest:

"[SEAL.] STERLING McDONALD,

"*Clerk of the County Court of Scotland County, Mo.*

"Countersigned and delivered this —.

"—— ——, *Trustee.*"

58 That to said bonds were attached lithographed interest coupons, which, excepting dates and numbers, were in words and figures as follows:

"$80. MEMPHIS, Mo., *Sept.* 1, 1870.

"The county of Scotland, State of Missouri, will pay to the bearer, on Dec. 31, 187–, at the Farmers' Loan and Trust Company, in New York, eighty dollars, being one year's interest on bond No. — for $1,000.

"S. McDONALD,

"*County Clerk.*"

That after said Dawson, styling himself presiding justice of the Scotland county court, of Missouri, had signed each of said bonds, one Sterling McDonald, who had previously been elected clerk of the county court of the county aforesaid, signed each of said papers as clerk of Scotland county court of Missouri, and made upon each of said bonds the impression of a seal purporting to be the seal of Scotland county court of Missouri, which seal had never been adopted by such court by any order entered upon its records; that thereafter, about September 1st, 1871, said McDonald delivered said pretended bonds and the lithographed coupons thereto then annexed, including among same each and every coupon in the 2nd count of plaintiff's petition described, to one Charles Mety, who receipted for same, styling himself therein "trustee of Scotland county, Missouri." Defendant avers that, although no subscription had ever been made by this defendant to the capital stock of the Alexandria and Bloomfield Railroad Company or any other railroad company,

and although no part of the route of the Alexandria and Bloomfield Railroad Company was then in or through any part of said Scotland county, but, on the contrary, had been, in 1864, in due form of law, by said Alexandria and Bloomfield Railroad Company, permanently located beyond the limits of said Scotland county; and although said proposed subscription by the said Dawson and Forgner, justices of the county court aforesaid, in the name of this defendant, had never been accepted or the conditions or terms thereof complied with by said Missouri, Iowa and Nebraska Railway Company, and although there was no corporation known as the Alexandria and Nebraska City Railway Company, nor was such pretended corporation formerly the Alexandria and Bloomfield Railroad Company; and although there was no lawful corporation known as the Iowa Southern Railway Company, and although the Missouri, Iowa and Nebraska Railway Company was not a corporation existing under or by virtue of the laws of the States of Missouri and Iowa, and although there never was a lawful consolidation of said pretended corporations, as alleged in said bonds, and although said bonds were lithographed and made to contain said recitals, by order only of F. M. Drake, and although said bonds were not actually printed until the year 1871 and were signed by said Dawson and McDonald long after the date inserted in said bonds, the said Mety, without other authority than the aforesaid entry, did, about the twenty-fifth of September, 1871, and the eleventh of December, 1871, deliver the aforesaid pretended bonds and coupons to certain persons, purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company, in exchange for utterly worthless certificates of shares of stock purporting to have been issued by said company to this defendant.

That before said Mety, as trustee, thus delivered said bonds at the dates aforesaid he wrote upon the face of each of said bonds numbered from 1 to 100 the words "Countersigned and delivered this the 21st of September, 1871," and upon each of said bonds numbered from 101 to 200, inclusive, the words "Countersigned and delivered December 11, 1871;" that after the making of the order aforesaid as entered upon the records of the county court of Scotland county and after said bonds had reached the hands of said trustee, but before the delivery of either of said bonds or coupons, the said Missouri, Iowa and Nebraska Railroad Company executed and delivered to a trustee in said mortgage named a mortgage to secure negotiable bonds to the amount of six millions of dollars upon all the stock and property or franchises, present or prospective, of said railroad company; that the immediate effect of said mortgage was to render the said common stock of said railroad company utterly valueless; but this defendant avers that neither the said county court of the county of Scotland, nor the justices thereof, nor the said Dawson nor McDonald, nor the said Mety, in any of the various orders or acts hereinbefore described, were the agents of this defendant, but that all of said acts and orders and all of the aforesaid pretended bonds and coupons are absolutely null and void, because no part of the route of the Missouri, Iowa and Nebraska Railway or of the Alexan-

dria and Bloomfield Railroad Company at the respective dates of said orders or acts was within the county of Scotland, in the State of Missouri; because at no time prior or subsequent to the dates of either of said orders or acts or at or prior or subsequent to the dates of the execution or delivery of said pretended bonds, or the acceptance by said Mety of said worthless certificates of stock, did the county court of the county of Scotland, in the State of Missouri, cause any election to be held in said county to ascertain the sense of the tax-payers of said county as to any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of any other company, or to ascertain the sense of said tax-payers as to whether any such subscription should be paid by issue of county bonds or by taxation, or for or against paying any such subscription by direct taxation; because at no time at any election ever held in said county of Scotland have a majority of or any of the resident voters of said county of Scotland, in the State of Missouri, voted in favor of any subscription by said county or by the county court of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of any other company; because at no election (whether general or special election) ever held therein have two-thirds of the qualified voters of said county of Scotland, in the State of Missouri, ever assented to any subscription of stock by or to any loan of the credit of said county of Scotland to the Missouri, Iowa and Nebraska Railway Company or the Alexandria and Bloomfield Railroad Company; because the county court of said county of Scotland has never at any time ordered any election to be held in said county of Scotland, in the State of Missouri, for the purpose of ascertaining the sense of the tax-payers thereof, or in order to obtain the assent of two-thirds of the qualified voters of said county, or a majority of the resident voters of said county, to any of the acts or orders hereinbefore described. Defendant avers that plaintiff received each of the several coupons in the — count of his — petition declared upon after the same had been detached from the pretended bonds hereinbefore described and after the dates of maturity of each of said coupons. Defendant avers that neither the plaintiff nor any other person or corporate body from whom he received the coupons aforesaid ever became the holder thereof by giving any valuable consideration, and that no individual or corporate body ever paid any valuable consideration to anybody for either of said coupons or the pretended bonds to which they were originally annexed, and that the plaintiff and the persons or corporate bodies from whom he received said coupons, and every person or corporate body ever holding either of the coupons or bonds aforesaid, had, since the occurrence thereof, actual as well as constructive notice of every fact in this defendant's — plea alleged.

59 7.

For further answer to the second count of plaintiff's petition defendant avers that the act purporting to be an act of the General Assembly of the State of Missouri approved February 19,

1866, entitled "An act to amend an act to incorporate the Alexandria and Bloomfield Railroad Company," approved February, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska, a city in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri, and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company, never became a law; more especially that said act never became a law in conformity to the twenty-third and twenty-fourth sections of the IV article of the constitution of the State of Missouri, then in force, and that the House and Senate journals of the twenty-third General Assembly of the State of Missouri establish said failure to comply with said constitutional requirements; and, moreover, that said pretended law is and ever has been inoperative, null, and void because the said pretended law is repugnant to sections XXV, XXVII, and XXXII of Article IV of the constitution of Missouri, adopted and in force from and after the 4th day of July, 1865.

60 8 *Plea.*

For further — answer to the second count of plaintiff's — petition defendant admits that on the 9th day of August, 1870, Wm. Dawson and Isaac Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, did cause to be made upon the records of said county court, a court of record then and at all times since said date, composed of three members, an offer that if certain conditions precedent therein set forth were accepted and complied with the county of Scotland, in the State of Missouri, would subscribe two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company in bonds of said county, and appointing one Charles Mety as trustee for said county to receive from the clerk of said court said bonds after the same might be issued, and to have custody of the same, and as soon as the said company accepted and complied with the aforesaid conditions precedent to deliver said bonds to the treasurer or other authorized agent of said company.

Defendant avers that all said acts were without authority of law.

Defendant avers that without any other authority or acts than as hereinbefore set forth said Dawson, during a vacation of the county court aforesaid, met with Sterling McDonald, clerk of the county court of said county, and signed as presiding justice of Scotland county, Missouri, two hundred lithographed papers, by each of which the county of Scotland purported to acknowledge itself indebted to the Missouri, Iowa and Nebraska Railway Company in the sum of one thousand dollars, with eight per cent. interest thereon, evidenced by coupons thereto annexed; that among said coupons so annexed to said pretended bonds then signed by said Dawson was each of the coupons in the aforesaid second count of plaintiff's — petition described; that said Sterling McDonald at the same time

attested each of said pretended bonds over his signature as clerk of the county court of Scotland county, Missouri, and then made upon each of said pretended bonds the impression of a seal purporting to be the "seal of Scotland county, Missouri," which seal, though never adopted by any order entered upon the records of said court, had previously been used as the seal of said county court. Defendant admits that the said McDonald thereafter delivered said pretended bonds and coupons to one Charles Mety, who receipted for the same, as trustee of Scotland county, Missouri, about the first of September, 1871, and who long thereafter delivered same to certain persons, purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company, but defendant avers that all of said acts and orders were without authority of law and void, and that about the 11th day of September, 1871, whilst said Mety still had in his custody the aforesaid pretended bonds and coupons, Levi J. Wagner and other citizens and tax-payers of said county of Scotland, in the State of Missouri, instituted, as plaintiffs, in the circuit court of said county of Scotland, in the State of Missouri, a suit against the said Charles Mety, William Dawson, David B. Cooper, and James E. Marquis, justices of the county court of said county, James S. Fullerton, and the Missouri, Iowa and Nebraska Railway Company, as defendants, the object and purpose of which suit was to enjoin the said Mety from delivering said bonds and coupons or any part thereof to the Missouri, Iowa and Nebraska Railway Company, or to any company, party, or person, to require the said Mety to deliver the same into court to be cancelled by said court, and to restrain and enjoin said justices of the county court of said county from appointing any agent to have, possess, or deliver said bonds or coupons, or to act in the board of said railroad company, and to restrain said Fullerton, as treasurer of said county, from paying any of said pretended bonds or coupons out of any money coming to or in his hands as treasurer of said county, and to have said bonds and coupons and all orders of the said county court aforesaid relating thereto declared null and void; that said injunction was, by E. V. Wilson, judge of the circuit court of said county of Scotland, in the State of Missouri, duly granted on the twenty-first of September, 1871, and said Mety and others enjoined and restrained in accordance with the prayer of the petition as hereinbefore set forth, and said Mety especially enjoined and restrained from delivering any of said bonds or coupons to any person or corporate body, all of which said Mety and each of the other defendants then had due notice, and which said injunction was made perpetual upon the final hearing thereof, as hereinafter stated.

Defendant avers that among the bonds and coupons in said suit of Levi J. Wagner *et al. v.* Charles Mety *et al.* involved and therein declared void was each of the coupons in the — count of plaintiff's petition described and each of the bonds from which said coupons were detached.

Defendant avers that after the commencement of the aforesaid suit of Levi J. Wagner *et al v.* Charles Mety *et al.*, and after each of the defendants therein had been served with process and volunta-

rily appeared therein and filed in said court their answer to said petition of Levi J. Wagner and others therein filed, a change of venue was granted in said cause from the county of Scotland aforesaid to the county of Shelby, in said State, and from the circuit court of said Scotland county to the circuit court of Shelby county, in said State of Missouri; and the plaintiffs having filed an amended petition therein for the purposes and objects hereinbefore shown to have been set forth in the original petition, and in addition thereto praying that the successors in office of said justices of the county court and of said treasurer of the county of Scotland might, as well as said defendants, be forever restrained from making any orders or doing any acts tending to give currency or validity to either of said pretended bonds or coupons, defendant avers that the defendants in said cause of Levi J. Wagner and others against Charles Mety and others, after having filed their answer to said amended petition,
61 withdrew said answer by leave of court; and thereupon the defendant, The Missouri, Iowa and Nebraska Railway Company, filed a demurrer to said amended petition, and the same coming on to be heard by the court was overruled by said court; and the other defendants having failed to answer or demur to said amended petition of Levi J. Wagner and others, the same was taken as confessed as to them, and the defendant, The Missouri, Iowa and Nebraska Railway Company, having declined to make further answer, but electing to stand upon the demurrer aforesaid, final judgment was rendered in the cause, and it was by the court adjudged that said Charles Mety be restrained and enjoined from delivering to the Missouri, Iowa and Nebraska Railway Company, or to any other company or persons, the bonds or coupons in said suit involved (and including the coupons herein involved and the pretended bonds to which they were originally annexed); and it was further adjudged by said circuit court of Shelby county, in the State of Missouri, that said Charles Mety produce any and all of said bonds and coupons then in his possession before said court on the first day of the May term, A. D. 1875, of said circuit court that the same might be canceled; and it was further considered, adjudged, and decreed by said court that the defendant, The Missouri, Iowa and Nebraska Railway Company, be restrained and enjoined from recovering from said Charles Mety, or from any other person acting as agent of said Scotland county, the bonds or coupons aforesaid, or either of same; and it was further adjudged and decreed by said circuit court of Shelby county that all the bonds and coupons aforesaid (including each of the coupons herein involved) were null and void by reason of the want of legal authority or power in the county court of Scotland county aforesaid to subscribe to the capital stock of said Missouri, Iowa and Nebraska Railway Company, or to issue bonds in payment thereof; and it was further adjudged, ordered, and decreed that said Missouri, Iowa and Nebraska Railway Company cause all of the said bonds and coupons in the aforesaid amended petition of said Levi J. Wagner described, and then in the possession of said company, its servants, employés, agents, or attorneys, to be produced before said court on the first day of the May term

thereof, in the year 1875; and it was further considered and adjudged by said court that said plaintiffs recover their costs therein. One of the said defendants, to wit, The Missouri, Iowa and Nebraska Railway Company, moved the court to set aside the finding and judgment in said cause and grant defendants a new trial thereon, which motion was by said court overruled and a new trial therein refused, the final judgment in favor of said plaintiffs and against said defendants in said cause as above recited, standing as the final judgment in said cause and unreversed by any court of competent jurisdiction of all the matters and things in said suit involved, which said suit was by the defendants taken by appeal from said circuit court of Shelby county, Missouri, to the supreme court of the State of Missouri, and the judgment and orders of said circuit court of Shelby county, Missouri, in said cause of Levi J. Wagner and others *v.* Charles Mety and others, made final by the judgment and decision of said supreme court; and the defendant herein avers the fact to be that said bonds and coupons have never passed into circulation; that the said Mety delivered said bonds and coupons, in defiance of the orders and decrees aforesaid, to certain persons, claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri, after notice of the application for injunction aforesaid, and after notice of the granting of a temporary injunction therein; that plaintiff in this cause received the pretended coupons in this cause involved after each of said coupons in the second count of this suit involved had been detached from the pretended bond to which it was originally annexed, and after the date of maturity of each of said coupons, and after the judgments hereinbefore recited as having been rendered in said case of Levi J. Wagner and others against Charles Mety and others by courts having full jurisdiction of all the questions therein decided. Defendant avers that plaintiff thus received each of said coupons in said second count of his amended and consolidated petition described without having given any good or valuable consideration for either of said coupons and with full actual notice of every fact in the defendant's plea set forth.

Defendant avers that plaintiff and the person from whom plaintiff received the said coupons, and each and every person or corporate body in whose possession said coupons or either of them has ever been held, received same without having given value therefor and with full actual notice of every fact in this defendant's fourth plea set forth.

Wherefore defendant asked to be dismissed with his costs in this behalf incurred.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

Endorsed: "No. 2482. Charles H. Mellen *vs.* Scotland county. Defendant's answer. Filed Mar. 18, 1885. A. P. Selby, clerk. Henry A. Cunningham, att'y for defendant."

62 *Replication.*

In the United States Circuit Court for the Eastern District of Missouri.
March Term, 1885.

CHARLES H. MELLEN, Pl'ff, *vs.* SCOTLAND COUNTY, Def't.

Plaintiff, for replication to the third defense in defendant's answer, says that he is the real party in interest prosecuting this action.

Plaintiff, for replication to the fourth defense in defendant's answer, denies each and every allegation thereof.

Plaintiff, for replication to the fifth and eighth defenses of defendant's answer, says that he has no knowledge or information sufficient to form a belief as to whether Levi J. Wagner and other citizens of Scotland county named in said fifth defense as plaintiffs instituted suit in the circuit court of Scotland county against Charles Mety and the other persons and corporations named in said fifth defense as defendants for the purpose in said fifth defense set forth and described, or whether any proceedings were had or orders made or judgment rendered in said cause, either in said circuit court or any other court, or whether such proceedings, judgment, or orders were appealed from to the supreme court of Missouri, or whether if so appealed the same were by said supreme court affirmed; wherefore plaintiff demands strict proof of all said allegations.

63 For further replication to said fifth and eighth defenses of said answer plaintiff denies that said bonds and coupons have never passed into circulation.

For further replication to the fifth and eighth defenses of defendant's answer plaintiff says that he has no knowledge or information sufficient to form a belief as to whether said Mety delivered said bonds and coupons in defiance of the orders and decrees in said fifth count mentioned to certain persons claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri or elsewhere, after notice of the application for injunction or after notice of the granting of a temporary injunction therein; wherefore he demands strict proof thereof.

For further replication to the fifth and eighth defenses of defendant's answer plaintiff denies that he received the coupons sued on and became the owner thereof after said coupons had been detached from the bonds with which they had been issued, or that he or those under whom he holds said coupons acquired the same without consideration, or that he or those under whom he claims had notice of the matters pleaded in said fifth defense; but, on the contrary, plaintiff avers that he and those under whom he claims title to said coupons purchased the same for value before maturity, relying upon the declarations in the bonds to which the said coupons were attached, and without notice of any matters pleaded in defendant's said third amended answer.

Plaintiff, for replication to the sixth defense of defendant's third amended answer, says that he has no knowledge or information suf-

ficient to form a belief as to whether the order set forth in said sixth defense was ever made by the county court of Scotland county,
64 or whether said bonds were issued without any other order or authority.

For further replication to said sixth defense plaintiff says that he has no knowledge or information sufficient to form a belief as to whether the Alexandria and Bloomfield Railroad Company located its route beyond the limits of Scotland county. Plaintiff says the subscription of defendant was accepted and the conditions and terms thereof complied with by said Missouri, Iowa and Nebraska Railway Company.

For further replication to said sixth defense plaintiff says that there was a corporation known as the Alexandria and Nebraska City Railroad Company, which was formerly the Alexandria and Bloomfield Railroad Company, and there was a lawful corporation known as the Iowa Southern Railway Company, and the Missouri, Iowa and Nebraska Railway Company was and is a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, the same being the Alexandria and Bloomfield Railway Company and Iowa Southern Railway Company, consolidated, and the route of which, at the date of the subscription and issuance of said bonds, lay and still lies through Scotland county.

Plaintiff, for further replication to said sixth defense, says that he has no knowledge or information sufficient to form a belief as to when said bonds were printed, signed, and delivered other than such knowledge and information as he received from the recitals of said bonds, and that said bonds recite upon their face that they were issued September 1st, 1870, and countersigned and delivered September 20th 1871.

For further replication to said sixth defense, plaintiff denies that he received the coupons sued on and became the owner thereof
65 after said coupons had been detached from the bonds with which they were issued, or that he or those under whom he holds said coupons acquired the same without consideration, or that he or those under whom he claims had notice of the matters pleaded in said sixth defense; but, on the contrary, plaintiff avers that he and those under whom he claims title to said coupons purchased the same for value before maturity, relying on the declarations in the bonds to which the said coupons were attached and without notice of any of the matters pleaded in defendant's said third amended answer.

For replication to the seventh defense in defendant's said answer plaintiff denies each and every allegation thereof.

BAKER & HUGHES AND
J. H. OVERALL,
Att'ys for Pl'ff.

Endorsed: "2482. Chas. H. Mellen *vs.* Scotland county. Replication. Filed March 21, 1885. A. P. Selby, clerk. Baker & Hughes and J. H. Overall, att'ys for pl'ff."

The record in case No 2456, of First National Bank of Warsaw against Scotland county, is in the words and figures following to wit:

Record in Case of First National Bank of Warsaw vs. Scotland Co.

Petition.

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, A. D. 1885.

FIRST NATIONAL BANK OF WARSAW, Plaintiff,

66 *against*

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

Plaintiff states that it is and has been for a long time a corporation organized and existing under the laws of the United States relating to national banks, and located and doing a general banking business at, and is a resident and citizen of, the city of Warsaw, in the State of Illinois, and defendant is an organized county in the State of Missouri and a citizen of said State.

Plaintiff, for cause of action, states that it is the holder and owner of the twenty-three (23) of the fourth maturing coupons herewith filed, detached from bonds number (sixteen) 16, 17, 18, 63, 64, 65, 66, 67, 68, 69, 70, 190, 75, 189, 81, 188, 82, 97, 98, 187, 100, 199, 200, said bonds being for one thousand dollars each.

Plaintiff further states that said bonds were of a series of two hundred of the same denomination, all of which were issued and delivered by said county of Scotland to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county had subscribed to the said railway company under and by virtue of an act of the General Assembly of the State of Missouri, entitled an act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857.

Plaintiff further states that said General Assembly of said State of Missouri afterwards passed and approved an amendatory act

67 thereto, entitled An act to amend an act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska city, in Nebraska Territory, by way of or near Rockport, Atchison county, Missouri, and also authorizing said company to accept all or any of the sections of this act, the same to be binding on said railroad company, which was duly approved February 19th, 1866.

Plaintiff further states that thereafter said Alexandria and Bloomfield Railroad Company duly accepted the first section of said amendatory act and changed its incorporate name to that of the Alexandria and Nebraska City railroad.

Plaintiff further states that said Alexandria and Nebraska City Railroad Company afterwards, to wit, on or about the — day of May, A. D. 1870, under authority of law, duly consolidated its capital stock with that of the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa; that by the articles of said consolidation the name of said consolidated company became and was the Missouri, Iowa and Nebraska Railway Company, the same company to which said defendant made the said subscription of stock.

Plaintiff further states that after said county had issued and delivered said bonds in payment of the subscription of stock aforesaid the said county caused to be levied and collected the next year thereafter a tax sufficient to meet and pay off the first year's interest, and out of said tax did pay off said interest, and did levy and collect taxes in other succeeding years and appropriate the same in
68 payment of such accruing interest, and did buy in and compromise a large number of said bonds, and did compromise a large number and issue other bonds of said county in payment thereof; that said county took and retained the said stock and voted it by its duly authorized agent at the annual and other meetings of said railway company, and ever retained and fully appropriated said stock to its own use and benefit, and in every way recognized said subscription and the said bonds as valid obligations of said county.

Plaintiff further states that said coupons are payable at the Farmers' Loan and Trust Company's bank, in the city and State of New York.

That said coupons are each for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874; that said coupons are now due and unpaid. Plaintiff says that the defendant has made no provision for the payment of said coupons, nor has it now nor has it at any time had any money in the said Farmers' Loan and Trust Company's bank subject to the payment of said coupons or any part thereof.

2nd Count.

Plaintiff, for further cause of action, states that it is the holder and owner of the ten (10) thirteenth maturing coupons herewith filed and detached from bonds number 16, 17, 18, 63, 64, 65, 66, 100, 199, 200, each of said bonds being for one thousand dollars.

Plaintiff further states that said bonds were of a series of two hundred of the same denomination, all of which were issued and delivered by said county of Scotland to the Missouri, Iowa and Ne-
69 braska Railway Company in payment for stock which the said county had subscribed to the said railway company under and by virtue of an act of the General Assembly of the State of Missouri, entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857.

Plaintiff further states that said General Assembly of said State of Missouri afterwards passed and approved an amendatory act thereto,

entitled An act to amend an act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, Atchison county, Missouri, and also authorizing said company to accept all or any of the sections of this act, the same to be binding on said railroad company, which was duly approved February 19th, 1866.

Plaintiff further states that thereafter said Alexandria and Bloomfield Railroad Company duly accepted the first section of said amendatory act and changed its incorporate name to that of the Alexandria and Nebraska City Railroad.

Plaintiff further states that said Alexandria and Nebraska City Railroad Company afterwards, to wit, on or about the — day of May, A. D. 1870, under authority of law, duly consolidated its capital stock with that of the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa; that by the articles of said consolidation the name of said consolidated company became and was the Missouri, Iowa and Nebraska Railway Company, the same company to which said defendant made the said subscription of stock.

70 Plaintiff further states that after said county had issued and delivered said bonds in payment of the subscription of stock aforesaid the said county caused to be levied and collected the next year thereafter a tax sufficient to meet and pay off the first year's interest, and out of said tax did pay off said interest, and did levy and collect taxes in other succeeding years and appropriate the same in payment of such accruing interest, and did buy in and compromise a large number of said bonds, and did compromise a large number and issue other bonds of said county in payment thereof; that said county took and retained the said stock and voted it by its duly authorized agent at the annual and other meetings of said railway company, and ever retained and fully appropriated said stock to its own use and benefit, and in every way recognized said subscription and the said bonds as valid obligations of said county.

Plaintiff further states that said coupons are payable at the Farmers' Loan and Trust Company's bank, in the city and State of New York.

That said coupons are each for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 18—; that said coupons are now due and unpaid. Plaintiff says that the defendant has made no provision for the payment of said coupons, nor has it now nor has it at any time had any money in the said Farmers' Loan and Trust Company's bank subject to the payment of said coupons or any part thereof.

Plaintiff states that the total amount due on said coupons is two thousand six hundred and forty dollars ($2,640.00); that by the laws of the said State of New York said coupons draw seven per cent. interest per annum from maturity.

Wherefore plaintiff demands judgment for said sum of
71 $2,640.00, together with seven per cent. interest thereon from the maturity of each of said coupons, and for costs of suit.

F. T. HUGHES AND A. J. BAKER,
Att'ys for Pl'ff.

Endorsed: "No. 2456. First National Bank of Warsaw *vs.* Scotland County. Petition. Filed Dec. 24, 1884. A. P. Selby, clerk."

Defendant's Answer.

In the Circuit Court of the United States for the Eastern District of Missouri. M'ch Term, 1885.

FIRST NATIONAL BANK OF WARSAW, Plaintiff,
vs.
SCOTLAND COUNTY, IN THE STATE OF MISSOURI, Defendant. } No. 2456.

Now comes the defendant, by Henry A. Cunningham, its attorney, and by leave of court makes this its answer to plaintiff's petition:

1. For answer to the first count or cause of action in plaintiff's petition contained defendant denies each and every allegation in said count in said petition contained.

2. For further answer to said first count or cause of action
72 in plaintiff's petition contained defendant avers that it did not make the pretended bond or either of the pretended coupons in said count described.

3. For further answer to said first count or cause of action in plaintiff's petition contained defendant avers that he is not the real party in interest prosecuting this action.

4. For further answer to said first count of plaintiff's petition defendant avers that plaintiff cannot maintain its action upon either of the twenty-three fourth maturing coupons therein declared upon, because heretofore, about the year 1878, each of said pretended coupons was sued upon and filed in this court in a case numbered 1153, of William Hill, plaintiff, *vs.* Scotland County, defendant, and that thereafter, on the 22nd of April, 1880, each of said coupons was merged in a final judgment by this court rendered in consolidated cases numbered 1153 and 1287, in favor of said William Hill against this defendant, which final judgment of this court, thus in due form made and entered upon its records, had not been at the date of the institution of this suit in anywise modified or altered by any order or mandate made part of the records of this court, but, in so far as may be made manifest from said records of this court, did at the date of the institution of this suit appear to be in full force and effect.

5. For further answer to the first count of plaintiff's petition defendant avers that the act purporting to be an act of the General Assembly of the State of Missouri, approved February 19, 1866, entitled "An act to amend an act to incorporate the Alexandria and Bloomfield Railroad Company," approved February, 1857, author-

izing said company to change the incorporate name; also
73 authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska, a city in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri, and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company, never became a law; more especially that said act never became a law in conformity to the twenty-third and twenty-fourth sections of the IV article of the constitution of the State of Missouri, then in force, and that the House and Senate journals of the twenty-third General Assembly of the State of Missouri establish said failure to comply with said constitutional requirements, and, moreover, that said pretended law is and ever has been inoperative, null, and void, because the said pretended law is repugnant to sections XXV, XXVII, and XXXII of article IV of the constitution of Missouri, adopted and in force from and after the 4th day of July, 1865.

6. For answer to the second count or cause of action in plaintiff's petition contained defendant denies each and every allegation in said count in said petition contained.

7. For further answer to said second count or cause of action in plaintiff's petition contained defendant avers that it did not make the pretended bond or either of the pretended coupons in said count described.

8. For further answer to said second count or cause of action in plaintiff's petition contained defendant avers that he is not the real party in interest prosecuting this action.

9. For further answer to the second count of plaintiff's petition defendant avers that the act purporting to be an act of the
74 General Assembly of the State of Missouri, approved February 19, 1866, entitled "An act to amend an act to incorporate the Alexandria and Bloomfield Railroad Company," approved February, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska, a city in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri, and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company, never became a law; more especially that said act never became a law in conformity to the twenty-third and twenty-fourth sections of the IV article of the constitution of the State of Missouri, then in force; and that the House and Senate journals of the twenty-third General Assembly of the State of Missouri establish said failure to comply with said constitutional requirements; and, moreover, that said pretended law is and ever has been inoperative, null, and void, because the said pretended law is repugnant to sections XXV, XXVII, and XXXII of article IV of the constitution of Missouri, adopted and in force from and after the 4th day of July, 1865.

75 10 *Plea.*

Defendant, for further answer to said 2nd count of plaintiff's petition, avers that on the 9th day of August, 1870, one William Dawson and one Isaac A. Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, a court of record then and at all times thereafter composed of three members, did cause to be entered upon the records of said court what purported to be an order of said court, in words and figures as follows, viz:

"At this day a petition was presented to the court, signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Gwynne, R. P. Wayland, and divers other persons, to the number of thirteen hundred and sixty-five tax-payers and residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock to the Missouri, Iowa and Nebraska Railroad Company, payable in county bonds, due twenty-five years from date, bearing interest at the rate of eight per cent. per annum, the interest payable semi-annually, commencing from date of completion and of contract on the part of said railway company. Now, therefore, in consideration of the prayer of the petitioners, and in pursuance and by virtue of law and the power that is given to the court to subscribe stock in said railway company, it is ordered by the court that the county of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company, payable in the bonds of said county of the denomination of one thousand dollars each, due twenty-five years from the date of issue and bearing eight per cent. per annum, the interest payable annually in the city of New York on the terms and conditions following: One hundred thousand dollars of said bonds to be delivered to said railway company when said road shall have been graded, bridged, and tied, and the track laid and the cars running through from Alexandria, Missouri, to a permanent depot located in one-half mile of the courthouse in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have completed their said line of road from Memphis to the west or north line of said county, and the cars running over the same through said county; provided the said railroad shall be so located as to miss the west line and strike the north line of said county, it shall do so at a point not exceeding four miles east of the northwest corner of said county; said railroad shall be so built and the cars running through as aforesaid within two years from the date of this order; otherwise this subscription shall be null and void; and it is ordered, further, that Henry M. Gorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company, to represent said county, at the meetings of the stockholders of said company, to cast the vote of said county, and receive the dividend; and, in order that the interests of the people may be fully guaranteed, the court doth appoint as trustee Charles Mety, of said county,

whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued, and to have the custody of the same; and as soon as the said railroad company shall have complied with the stipulations above set forth the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company, and shall at the same time receive from said treasurer or the agent of said company an equal amount in certificates of stock of said railway company, which said certificates of stock the same trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his actions, shall be presented to the county court at the next meeting thereafter; and the said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security to be approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trustee; it is further ordered by the court that the county attorney of said county shall proceed to have said bonds printed or lithographed, and that the presiding justice of the county court of said county shall sign the same, and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annexed coupons attached, and the trustee aforesaid shall, when he delivers said bonds to said railway company, detach all, any, or all coupons for interest that may have passed maturity, and cancel and return the same to the treasurer of said county when his report as aforesaid is made, and shall enter upon the next maturing coupons of said bonds the date of delivery to said company, in order that said company shall receive interest only from the date they are entitled to receive said bonds; it is provided further that said railway company shall pay all the expenses of lithographing and printing said bonds.

76 Defendant avers that, without any other order or authority than is heretofore set forth, the said William Dawson did sign (during a vacation of said county court), as presiding justice of Scotland county court of Missouri, two hundred lithographed papers, each of which, excepting numbers of bond and date of countersignature and delivery, was in words and figures as follows:

"$1,000. UNITED STATES OF AMERICA. No. 5.

"Eight per cent. railroad bond.

"County of Scotland. Twenty-five years.

"Know all men by these presents that the County of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa & Nebraska Railway Company, a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company (formerly Alexandria and Bloomfield Railroad Company), of the State of Missouri, and the Iowa Southern

Railway Company, of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company, or bearer, at the Farmers' Loan and Trust Company, New York, on the thirty-first day of December, A. D. 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually in the city of New York on the thirty-first day of December in each year as the same shall become due, on the presentation of the coupon hereto annexed, this bond being issued under and pursuant to an order of the county court of said Scotland county for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri, entitled 'An act to incorporate the Alexandria and Bloomfield Railroad Company,' approved February 9, 1857.

"In testimony whereof the said County of Scotland has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court. This done, at the town of Memphis, in the county of Scotland, in the State of Missouri, this first day of September, A. D. 1870.

"WILLIAM DAWSON,
"*Presiding Justice of the County Court of Scotland County, Mo.*

"Attest:
[SEAL.] "STERLING McDONALD,
"*Clerk of the County Court of Scotland County, Mo.*"

Countersigned and delivered this — ——.

——— ———, *Trustee.*

77 That to said bonds were attached lithographed interest coupons, which, excepting dates and numbers, were in words and figures as follows:

"$80. MEMPHIS, MO., *Sept.* 1, 1870.

"The county of Scotland, State of Missouri, will pay to the bearer, on Dec. 31, 187–, at the Farmers' Loan and Trust Company, in New York, eighty dollars, being one year's interest on bond No. —, for $1,000.

"S. McDONALD,
"*County Clerk.*"

That after said Dawson, styling himself presiding justice of the Scotland county court of Missouri, had signed each of said bonds one Sterling McDonald, who had previously been elected clerk of the county court of the county aforesaid, signed each of said papers as clerk of Scotland county court of Missouri, and made upon each of said bonds the impression of a seal purporting to be the seal of Scotland county court of Missouri, which seal had never been

adopted by such court by any order entered upon its records; that thereafter, about September 1st, 1871, said McDonald delivered said pretended bonds and the lithographed coupons thereto then annexed, including among same each and every coupon in the second count of plaintiff's — petition described, to one Charles Mety, who receipted for same, styling himself therein "trustee of Scotland county, Missouri." Defendant avers that although no subscription had ever been made by this defendant to the capital stock of the Alexandria and Bloomfield Railroad Company or any other railroad company, and although no part of the route of the Alexandria and Bloomfield Railroad Company was then in or through any part of said Scotland county, but, on the contrary, had been, in 1864, in due form of law by said Alexandria and Bloomfield Railroad Company permanently located beyond the limits of said Scotland county, and although said proposed subscription by the said Dawson and Forgner, justices of the county court aforesaid, in the name of this defendant, had never been accepted or the conditions or terms thereof complied with by said Missouri, Iowa and Nebraska Railway Company, and although there was no corporation known as the Alexandria and Nebraska City Railway Company, nor was such pretended corporation formerly the Alexandria and Bloomfield Railroad Company, and although there was no lawful corporation known as the Iowa Southern Railway Company, and although the Missouri, Iowa and Nebraska Railway Company was not a corporation existing under or by virtue of the laws of the States of Missouri and Iowa, and although there never was a lawful consolidation of said pretended corporations, as alleged in said bonds, and although said bonds were lithographed and made to contain said recitals by order only of F. M. Drake, and although said bonds were not actually printed until the year 1871, and were signed by said Dawson and McDonald long after the date inserted in said bonds, the said Mety, without other authority than the aforesaid entry, did, about the twenty-fifth of September, 1871, and the eleventh of December, 1871, deliver the aforesaid pretended bonds and coupons to certain persons, purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company, in exchange for utterly worthless certificates of shares of stock purporting to have been issued by said company to this defendant.

That before said Mety, as trustee, thus delivered said bonds at the dates aforesaid he wrote upon the face of each of said bonds numbered from 1 to 100 the words "Countersigned and delivered this the 21st of September, 1871," and upon each of said bonds numbered from 101 to 200, inclusive, the words "Countersigned and delivered December 11, 1871;" that after the making of the order aforesaid, as entered upon the records of the county court of Scotland county, and after said bonds had reached the hands of said trustee, but before the delivery of either of said bonds or coupons, the said Missouri, Iowa and Nebraska Railroad Company executed and delivered to a trustee in said mortgage named a mortgage to secure negotiable bonds to the amount of six millions of dollars upon all the stock and property or franchises, present or prospective, of said railroad

company; that the immediate effect of said mortgage was to render the said common stock of said railroad company utterly valueless; but this defendant avers that neither the said county court of the county of Scotland, nor the justices thereof, nor the said Dawson nor McDonald, nor the said Mety, in any of the various orders or acts hereinbefore described, were the agents of this defendant, but that all of said acts and orders and all of the aforesaid pretended bonds and coupons are absolutely null and void, because no part of the route of the Missouri, Iowa and Nebraska railway or of the Alexandria and Bloomfield Railroad Company at the respective dates of said orders or acts was within the county of Scotland, in the State of Missouri; because at no time prior or subsequent to the dates of either of said orders or acts, or at or prior or subsequent to the dates of the execution or delivery of said pretended bonds or the acceptance by said Mety of said worthless certificates of stock, did the county court of the county of Scotland, in the State of Missouri, cause any election to be held in said county to ascertain the sense of the tax-payers of said county as to any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of any other company, or to ascertain the sense of said tax-payers as to whether any such subscription should be paid by issue of county bonds or by taxation or for or against paying any such subscription by direct taxation; because at no time at any election ever held in said county of Scotland have a majority of or any of the resident voters of said county of Scotland, in the State of Missouri, voted in favor of any subscription by said county or by the county court of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of any other company; because at no election (whether general or special election) ever held therein have two-thirds of the qualified voters of said county of Scotland, in the State of Missouri, ever assented to any subscription of stock by, or to any loan of the credit of, said county of Scotland to the Missouri, Iowa and Nebraska Railway Company or to the Alexandria and Bloomfield Railroad Company; because the county court of said county of Scotland has never at any time ordered any election to be held in said county of Scotland, in the State of Missouri, for the purpose of ascertaining the sense of the tax-payers thereof, or in order to obtain the assent of two-thirds of the qualified voters of said county or a majority of the resident voters of said county to any of the acts or orders hereinbefore described. Defendant avers that plaintiff received each of the several coupons in the second count of his — petition declared upon after the same had been detached from the pretended bonds hereinbefore described and after the dates of maturity of each of said coupons. Defendant avers that neither the plaintiff nor any other person or corporate body from whom he received the coupons aforesaid ever became the holder thereof by giving any valuable consideration, and that no individual or corporate body ever paid any valuable consideration to anybody for either of said coupons or the pretended bonds to which they were originally annexed, and that the plaintiff and the persons or corporate bodies from whom he received said coupons and every person or corporate body ever hold-

ing either of the coupons or bonds aforesaid had since the occurrence thereof actual as well as constructive notice of every fact in this defendant's — plea alleged.

78 11 *Plea.*

For further answer to the second count of plaintiff's petition defendant admits that on the 9th day of August, 1870, Wm. Dawson and Isaac Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, did cause to be made upon the records of said county court, a court of record, then and at all times since said date composed of three members, an offer that if certain conditions precedent therein set forth were accepted and complied with the county of Scotland, in the State of Missouri, would subscribe two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company in bonds of said county, and appointing one Charles Mety as trustee for said county to receive from the clerk of said court said bonds after the same might be issued and to have custody of the same and as soon as the said company accepted and complied with the aforesaid conditions precedent to deliver said bonds to the treasurer or other authorized agent of said company.

Defendant avers that all said acts were without authority of law.

Defendant avers that without any other authority or acts than as hereinbefore set forth said Dawson, during a vacation of the county court aforesaid, met with Sterling McDonald, clerk of the county court of said county, and signed, as presiding justice of Scotland county, Missouri, two hundred lithographed papers, by each of which the county of Scotland purported to acknowledge itself indebted to the Missouri, Iowa and Nebraska Railway Company in the sum of one thousand dollars, with eight per cent. interest
79 thereon, evidenced by coupons thereto annexed; that among said coupons so annexed to said pretended bonds then signed by said Dawson was each of the coupons in the aforesaid second count of plaintiff's petition described; that said Sterling McDonald at the same time attested each of said pretended bonds over his signature as clerk of the county court of Scotland county, Missouri, and then made upon each of said pretended bonds the impression of a seal purporting to be the "seal of Scotland county, Missouri," which seal, though never adopted by any order entered upon the records of said court, had previously been used as the seal of said county court. Defendant admits that the said McDonald thereafter delivered said pretended bonds and coupons to one Charles Mety, who receipted for the same as trustee of Scotland county, Missouri, about the first of September, 1871, and who long thereafter delivered same to certain persons purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company, but defendant avers that all of said acts and orders were without authority of law and void, and that about the 11th day of September, 1871, whilst said Mety still had in his custody the aforesaid pretended bonds and coupons, Levi J. Wagner, and other citizens and tax-payers of said

county of Scotland, in the State of Missouri, instituted, as plaintiffs, in the circuit court of said county of Scotland, in the State of Missouri, a suit against the said Charles Mety, William Dawson, David B. Cooper, and James E. Marquis, justices of the county court of said county, James S. Fullerton, and the Missouri, Iowa and Nebraska Railway Company, as defendants, the object and purpose of which suit was to enjoin the said Mety from delivering said bonds or coupons or any part thereof to the Missouri, Iowa and Nebraska Railway Company or to any company,
80 party, or person, to require the said Mety to deliver the same into court to be cancelled by said court, and to restrain and enjoin said justices of the county court of said county from appointing any agent to have, possess, or deliver said bonds or coupons or to act in the board of said railroad company, and to restrain said Fullerton, as treasurer of said county, from paying any of said pretended bonds or coupons out of any money coming to or in his hands as treasurer of said county, and to have said bonds and coupons and all orders of the said county court aforesaid relating thereto declared null and void; that said injunction was, by E. V. Wilson, judge of the circuit court of said county of Scotland, in the State of Missouri, duly granted on the twenty-first of September, 1871, and said Mety and others enjoined and restrained in accordance with the prayer of the petition, as hereinbefore set forth, and said Mety especially enjoined and restrained from delivering any of said bonds or coupons to any person or corporate body, all of which said Mety and each of the other defendants then had due notice, and which said injunction was made perpetual upon the final hearing thereof, as hereinafter stated.

Defendant avers that among the bonds and coupons in said suit of Levi J. Wagner *et al v.* Charles Mety *et al.* involved and therein declared void was each of the coupons in the 2nd count of plaintiff's petition described and each of the bonds from which said coupons were detached.

Defendant avers that after the commencement of the aforesaid suit of Levi J. Wagner *et al v.* Charles Mety *et al.*, and after each of the defendants therein had been served with process and voluntarily appeared therein and filed in said court their
81 answer to said petition of Levi J. Wagner and others therein filed, a change of venue was granted in said cause from the county of Scotland aforesaid to the county of Shelby, in said State, and from the circuit court of said Scotland county to the circuit court of Shelby county, in said State of Missouri; and the plaintiffs having filed an amended petition therein for the purposes and objects hereinbefore shown to have been set forth in the original petition, and, in addition thereto, praying that the successors in office of said justices of the county court and of said treasurer of the county of Scotland court might, as well as said defendants, be forever restrained from making any orders or doing any acts tending to give currency or validity to either of said pretended bonds or coupons, defendant avers that the defendants in said cause of Levi J. Wagner and others against Charles Mety and others, after having

filed their answer to said amended petition, withdrew said answer, by leave of court, and thereupon the defendant, The Missouri, Iowa and Nebraska Railway Company, filed a demurrer to said amended petition, and the same coming on to be heard by the court was overruled by said court; and the other defendants having failed to answer or demur to said amended petition of Levi J. Wagner and others, the same was taken as confessed as to them, and the defendant, The Missouri, Iowa and Nebraska Railway Company, having declined to make further answer, but electing to stand upon the demurrer aforesaid, final judgment was rendered in the cause, and it was by the court adjudged that said Charles Mety be restrained and enjoined from delivering to the Missouri, Iowa and Nebraska Railway Company or to any other company or persons the bonds or coupons in said suit involved (and including the
82 coupons herein involved and the pretended bonds to which they were originally annexed); and it was further adjudged by said circuit court of Shelby county, in the State of Missouri, that said Charles Mety produce any and all of said bonds and coupons then in his possession before said court on the first day of the May term, A. D. 1875, of said circuit court that the same might be canceled; and it was further considered, adjudged, and decreed by said court that the defendant, The Missouri, Iowa and Nebraska Railway Company, be restrained and enjoined from recovering from said Charles Mety, or from any other person acting as agent of said Scotland county, the bonds or coupons aforesaid or either of same; and it was further adjudged and decreed by said circuit court of Shelby county that all the bonds and coupons aforesaid (including each of the coupons herein involved) were null and void by reason of the want of legal authority or power in the county court of Scotland county aforesaid to subscribe to the capital stock of said Missouri, Iowa and Nebraska Railway Company or to issue bonds in payment thereof; and it was further adjudged, ordered, and decreed that said Missouri, Iowa and Nebraska Railway Company cause all of the said bonds and coupons in the aforesaid amended petition of said Levi J. Wagner described and then in the possession of said company, its servants, employés, agents, or attorneys, to be produced before said court on the first day of the May term thereof, in the year 1875; and it was further considered and adjudged by said court that said plaintiffs recover their costs therein. One of said defendants, to wit, The Missouri, Iowa and Nebraska Railway Company, moved the court to set aside the finding and judgment
83 in said cause and grant defendants a new trial thereon, which motion was by said court overruled and a new trial therein refused, the final judgment in favor of said plaintiffs and against said defendants in said cause as above recited standing as the final judgment in said cause and unreversed by any court of competent jurisdiction of all the matters and things in said suit involved, which said suit was by the defendants taken by appeal from said circuit court of Shelby county, Missouri, to the supreme court of the State of Missouri, and the judgment and orders of said circuit court of Shelby county, Missouri, in said cause of Levi J. Wagner and

others *v.* Charles Mety and others made final by judgment and decision of said supreme court; and the defendant herein avers the fact to be that said bonds and coupons have never passed into circulation; that the said Mety delivered said bonds and coupons in defiance of the orders and decrees aforesaid to certain persons claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri, after notice of the application for injunction aforesaid and after notice of the granting of a temporary injunction therein; that plaintiff in this cause received the pretended coupons in this cause involved after each of said coupons in the second count of this suit involved had been detached from the pretended bond to which it was originally annexed and after the date of maturity of each of said coupons, and after the judgments hereinbefore recited as having been rendered in said case of Levi J. Wagner and others against Charles Mety and others by courts having full jurisdiction of all the questions therein decided. Defendant avers that plain-
84 tiff thus received each of said coupons in said second count of his amended and consolidated petition described without having given any good or valuable consideration for either of said coupons and with full actual notice of every fact in the defendant's plea set forth.

Defendant avers that plaintiff and the person from whom plaintiff received the said coupons and each and every person or corporate body in whose possession said coupons or either of them has ever been held received the same without having given value therefor and with full actual notice of every fact in this defendant's plea set forth.

Wherefore defendant asked to be dismissed with his costs in this behalf incurred.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

Endorsed: No. 2456. First National Bank of Warsaw *vs.* Scotland County. Defendant's answer. Filed Mar. 18, 1885. A. P. Selby, clerk. Henry A. Cunningham, att'y for defendant.

85 *Replication.*

In the United States Circuit Court for the Eastern District of Missouri. March Term, 1885.

FIRST NATIONAL BANK OF WARSAW, Plaintiff,

vs.

SCOTLAND COUNTY, Defendant.

Plaintiff, for replication to the third defense in defendant's answer, says it is the real party in interest prosecuting this action.

Plaintiff, for replication to the fourth defense in said answer, says that at the date of the institution of this suit said judgment of this court in the consolidated cases numbered 1153 and 1287, described

in said fourth defense, had been reversed by the Supreme Court of the United States, and said judgment was not at the date of the institution of this suit in full force or effect.

Plaintiff, for replication to the fifth defense in said answer, denies each and every allegation thereof.

Plaintiff, for replication to the eighth defense of said answer, says it is the real party in interest prosecuting this action.

Plaintiff, for replication to the ninth defense of said answer, denies each and every allegation thereof.

Plaintiff, for replication to the tenth defense of defendant's third amended answer, says that he has no knowledge or information sufficient to form a belief as to whether the order set forth in
86 said sixth defense was ever made by the county court of Scotland county, or whether said bonds was issued without any other order or authority.

For further replication to said tenth defense plaintiff says that he has no knowledge or information sufficient to form a belief as to whether the Alexandria and Bloomfield Railroad Company located its route beyond the limits of Scotland county. Plaintiff says the subscription of defendant was accepted and the conditions and terms thereof complied with by said Missouri, Iowa and Nebraska Railway Company.

For further replication to said tenth defense plaintiff says that there was a corporation known as the Alexandria and Nebraska City Railway Company, which was formerly the Alexandria and Bloomfield Railroad Company, and there was a lawful corporation known as the Iowa Southern Railway Company, and the Missouri, Iowa and Nebraska Railway Company was and is a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, the same being the Alexandria and Bloomfield Railway Company and Iowa Southern Railway Company consolidated, and the route of which at the date of the subscription and issuance of said bonds lay and still lies through Scotland county.

Plaintiff, for further replication to said tenth defense, says that he has no knowledge or information sufficient to form a belief as to when said bonds were printed, signed, or delivered other than such knowledge and information as he received from the recitals of said bonds, and that said bonds recite upon their face that they were issued September 1st, 1870, and countersigned and delivered September 20th, 1871.

For further replication to said tenth defense plaintiff denies
87 that he received the coupons sued on and became the owner thereof after said coupons had been detached from the bonds with which they were issued, or that he or those under whom he holds said coupons acquired the same without consideration, or that he or those under whom he claims had notice of the matters pleaded in said sixth defense; but, on the contrary, plaintiff avers that he and those under whom he claims title to said coupons purchased the same for value before maturity, relying on the declarations in the bonds to which the said coupons were attached and without notice

of any of the matters pleaded in defendant's said third amended answer.

Plaintiff, for replication to the eleventh defense of defendant's third amended answer, says that he has no knowledge or information sufficient to form a belief as to whether Levi J. Wagner and other citizens of Scotland county named in said fifth defense as plaintiff instituted suit in the circuit court of Scotland county against Charles Mety and the other persons and corporations named in said fifth defense as defendants for the purpose in said fifth defense set forth and described, or whether any proceedings were had or orders made or judgment rendered in said cause, either in said circuit court or any other court, or whether such proceedings, judgment, and orders were appealed from to the supreme court of Missouri, or whether, if so appealed, the same were by said supreme court affirmed; wherefore plaintiff demands strict proof of all said allegations.

For further replication to said eleventh defense of said third amended answer plaintiff denies that said bonds and coupons have never passed into circulation.

88 For further replication to the eleventh defense of defendant's third amended answer plaintiff says that he has no knowledge or information sufficient to form a belief as to whether said Mety delivered said bonds and coupons in defiance of the orders and decrees in said fifth count mentioned to certain persons claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri or elsewhere, after notice of the application for injunction or after notice of the granting of a temporary injunction therein; wherefore he demands strict proof thereof.

For further replication to the eleventh defense of defendant's third amended answer plaintiff denies that he received the coupons sued on and became the owner thereof after said coupons had been detached from the bonds with which they had been issued, or that he or those under whom he holds said coupons acquired the same without consideration, or that he or those under whom he claims had notice of the matters pleaded in said fifth defense; but, on the contrary, plaintiff avers that he and those under whom he claims title to said coupons purchased the same for value before maturity, relying upon the declarations in the bonds to which the said coupons were attached, and without notice of any matters pleaded in defendant's said third amended answer.

BAKER & HUGHES AND
J. H. OVERALL,
Att'y- for Pl'ff.

Endorsed: "2456. First National Bank *vs.* Scotland County. Replication. Filed March 21, 1885. A. P. Selby, clerk. Baker and Hughes and J. H. Overall, att'y- for pl'ff."

89 The COURT: You may except. I am not going to waste the time of the jury and the court in going over the same thing

three times in succession. It falls within the province the court for wise reasons and I shall order the cases to be consolidated for the purpose of the trial. I merely mention it so that you may direct your inquiries to the jury accordingly. You only spoke of Wm. Hill's case. Now, there is the case of First National Bank against Scotland County and the case of Charles H. Mellen against Scotland County. If you wish to ask any questions in regard to those parties you can do so.

Mr. OVERALL, of counsel for plaintiff: You make the order for the purposes of the trial?

The COURT: That is all.

Mr. OVERALL: Some of them involve less than $5,000.

The COURT: For the purposes of the trial I make the order so that we may hear the case once for all. There will be different verdicts in each case.

Mr. OVERALL, of counsel for plaintiff: The court having consolidated the cases that puts us back to our original rights to inquire of the jury and also to except, if we desire to.

The COURT: Certainly; and that is the reason I made the suggestion. You can make a challenge if you desire and so with the defendants.

Mr. CUNNINGHAM, of counsel for defendant: I desire the short-hand report will show that after the plaintiff had accepted the jury the court ordered the other cases to be consolidated, subject to
90 the exception of the defendant, and then he permitted the plaintiff to exercise the right of challenge.

The COURT (to the reporter): You may enter, in addition to that, Mr. Reporter, that the case of Hill against Scotland County, having been called, and the court seeing on its docket that there were three cases which involved the same inquiry, did order the cases consolidated for the purposes of trial in order to avoid a useless delay in the proceedings of the court in the administration of matters and the unnecessary detention of the jury by three times going over the same matter.

Mr. OVERALL, of counsel for plaintiff: The question asked was, after we got through examining the jury, having consolidated the other cases, whether we would have the right to examine the jury and to challenge?

The COURT: Certainly; both sides.

Mr. KRUM, of counsel for defendant: Do you mean by that you have nine peremptory challenges?

Mr. OVERALL, of counsel for plaintiff: No; we have three.

The COURT: There may be some reasons appertaining to one case that do not pertain to the others.

Mr. OVERALL, of counsel for plaintiff: I understand we make one challenge at a time?

The COURT: You can make as many as you please, up to three.

Mr. OVERALL, of counsel for plaintiff: But one at a time?

The COURT: No; no zigzaging.

Mr. Overall, as counsel for the plaintiff, then excused three jurors, and three additional names were called and the panel was

thereupon completed, there being no challenges on the part of the defendant.

91 Mr. OVERALL: Before going into the evidence there are certain coupons we wish to dismiss, viz., coupons 6 and 7 from 38, 39, 40, 44, 45, 76, 77, 78, 79, 80, 50, 51, 52, 95, 96, 107, 108, 185, 186; coupons number 2 and 3 from 53, 54, 55; coupon No. 3 from 128, 129, 130, and number 6 from bond No. 42. We ask that they may be in the nature of a nonsuit as to these coupons.

The COURT: That is a technical term not used in this court. You dismiss as to those?

Mr. OVERALL: Yes.

Mr. CUNNINGHAM: I desire to make the point, if they take a nonsuit or if it is to be — the nature of a nonsuit, the entire case must go out of court. They must either dismiss or take a nonsuit as to the whole case.

Mr. OVERALL: There are two coupons in the First National Bank case of bonds 16, 17, 18, 100, 199, and 210.

I wish to introduce in the first place an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Alexandria & Bloomfield Railroad Co.," approved February 9th, 1857, and call your honor's attention particularly to section 10, page 95.

Said act is in the words and figures following, to wit:

An Act to Incorporate the Alexandria and Bloomfield Railroad Company.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. That James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph J. Benning, and Reynolds Bane, of the county of Clarke, and all

92 such persons as may hereafter become stockholders in the said company shall be, and they are hereby, created a body corporate and politic, in fact and in name, by the name and style of the "Alexandria and Bloomfield Railroad Company," and by the same title the stockholders shall be in perpetual succession, and be able to sue and be sued, to plead and be impleaded, in all courts of record and elsewhere, and to purchase, receive, have, hold, and enjoy to them and to their successors, lands, tenements, and hereditaments, goods, chattels, and all estates, real, personal, and mixed, of what kind or quality soever, and the same from time to time to sell, mortgage, grant, alien, and convey, and to make dividends of such portions of the profits as they may deem proper; and also to make and have a common seal, and the same to alter or renew at pleasure; and also to ordain, establish, and put in execution such by-laws, ordinances, and regulations as shall be necessary and convenient for the government of said corporation, not being contrary or repugnant to the Constitution and laws of the United States and of the State of Missouri; and generally to do all and singular the matters and things which to them it shall lawfully appertain to do

for the well-being of said corporation and the due management and ordering of the affairs of the same: Provided always, That it shall not be lawful for the said corporation to deal or use or employ any part of the stock, funds, or money in buying or selling any wares or merchandise in the way of traffic or in banking or brokering operations.

§ 2. The capital stock of said company shall be two mil-
93 lions of dollars, divided into twenty thousand shares of one hundred dollars each, and it shall be lawful for said corporation when and so soon as in the opinion of the individuals named in the foregoing section a sufficient amount of stock shall have been taken for that purpose to commence and carry on their said proper business and railroad operations under the privileges and conditions herein granted.

§ 3. That said company are hereby authorized and empowered to cause books for the subscription of stock to be opened at such times and places as they may deem most conducive to the attainment of the stock required.

§ 4. So soon as one thousand shares of the stock shall be subscribed the directors shall cause an election to be held for nine directors at such time and place as they may appoint, and give notice of the same in one or more newspapers published in the State.

§ 5. An election for nine directors shall be held on the first Monday in May in each year, and if not held on that day at any other time the directors may designate. The election shall be held under the supervision of one or more stockholders, and the persons receiving the highest number of votes shall be elected and continue in office until their successors shall be qualified. Every stockholder shall be entitled to one vote for each share held by him, and he may vote by proxy. Soon after the election the directors shall meet and elect one of their number president, who shall hold his office for the term for which he was elected director and until his successor be qualified.

§ 6. The directors shall appoint agents, clerks, engineers,
94 superintendents, and other officers and servants for said company; shall keep a journal of their proceedings; shall cause correct books and accounts to be kept; they may determine by by-laws what number of directors shall constitute a quorum, and may appoint committees and fill all offices under said company; they shall fix the salaries of the president and the officers and agents, but no director shall receive any compensation for his services as such; they may take security from officers and agents and may adopt such measures and do such acts as will be best calculated to promote the prosperity and usefulness of said company.

§ 7. The directors shall make and advertise calls for the payment of capital stock at such times and in such manner as they may deem proper, and if any stockholder shall fail to pay such requisition within fifteen days after the time appointed said company may recover the same, with interest, or, if not paid, may declare the stock forfeited and sell the same, and no delinquent stockholder shall vote in said company.

§ 8. Said company shall have full power to survey, mark, locate, and construct a railroad from the city of Alexandria, in the county of Clarke, in the direction of Bloomfield, in the State of Iowa, to such point on the northern boundary line of the State of Missouri as shall be agreed upon by said company and a company authorized on the part of the State of Iowa to construct a railroad to intersect the road authorized to be constructed by the provisions of this act at the most practicable point on said State line, and for that purpose may hold a strip of land not exceeding one hundred feet wide,
95 and may also hold sufficient land for the construction of depots, warehouses, and water stations, and may select such route as may be deemed most advantageous.

§ 9. The stock of said company shall be exempt from taxation for the period of twenty years after its completion.

§ 10. Said company shall in all things be subject to the same restrictions and entitled to all the privileges, rights, and immunities which were granted to the North Missouri Railroad Company by an act entitled "An act to incorporate the North Missouri Railroad Company," approved March 3, 1851, so far as the same are applicable to the company hereby created, as fully and completely as if the same were herein re-enacted.

§ 11. Said company shall commence the construction of said road within ten years after the passage of this act and complete the same in ten years thereafter.

§ 12. The stockholders of said company shall be, and are hereby, exempted from the effects of sections nine and ten of the act entitled "An act to authorize the formation of railroad associations, and to regulate the same," approved December 13, 1855.

This act to take effect from and after its passage.

Approved February 9, 1857.

Plaintiff then offered in evidence the act entitled an "Act to incorporate the North Missouri Railroad Company," approved March 3d, 1851.

Said act is in the words and figures following, to wit:

An Act to Incorporate the North Missouri Railroad Company.

96 Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. A company is hereby incorporated, called "The North Missouri Railroad Company," the capital stock of which shall be six millions of dollars, to be divided into shares of one hundred dollars each, the holders of which, their successors or assigns, shall constitute a body corporate and politic, and by the name aforesaid shall have continued succession; may sue and be sued, plead and be impleaded, defend and be defended against, and may make and use a common seal, and change or alter the same, and shall be able in law and equity to make contracts; may take, hold, use, possess, and enjoy the fee simple or other title in and to any real estate, and may sell, convey, pledge, mortgage, or dispose of the same; may

make by-laws, rules, and regulations proper and necessary for carrying into the effect the provisions of this act not repugnant to the Constitution or laws of the United States or of this State, and shall have the usual and necessary powers of companies for such purposes.

§ 2. David K. Pittman, Charles M. Johnson, William J. McElhiney, Benjamin A. Alderson, Arnold Krekel, Ludwell E. Powell, Robert H. Parks, Andrew King, and Robert Frazier, of the county of St. Charles; John A. Pulliam and Thomas J. Marshall, of Warren county; Charles B. Harper and Jas. H. Robinson, of Montgomery county; Jefferson F. Jones and John Harrrison, of Callaway county; R. C. Calhoun and B. Z. Offutt, of Audrain county; William H. Parcels and James C. Goode, of Adair county; George A. Shortridge and Benjamin Sharp, of Macon county, and
97 Dabney Garth, John McCampbell, and Hancock Jackson, of Randolph county, or any nine of them, shall constitute the first board of directors under this act, and shall hold their office until their successors shall be qualified. They shall, within any ten years from the date of the passage of this act, meet at such time and place as shall be designated by any three of them and organize as a board of directors, and when organized they shall cause books to be opened for the subscription of the capital stock of said company at such time and place as they may designate, under the supervision of such persons as they may appoint, and may continue them open so long as they may deem proper, and may reopen such books when necessary until the whole stock shall be subscribed.

§ 3. So soon as fifteen hundred shares shall be subscribed the directors shall cause an election to be held for nine directors at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

§ 4. An election for nine directors shall be held on the first Monday in April in each year, and if not held on that day an election may be held at any other time that the directors shall designate; the election shall be held under the supervision of one or more stockholders, and the persons receiving the highest number of votes shall be elected, and shall continue in office until their successors be qualified; every stockholder shall be entitled to one vote for each share held by him, and he may vote by proxy; soon after their election the directors shall meet and elect one of their number president, who shall hold his office for the term for which he was elected director and until his successor shall be qualified.

98 § 5. The directors shall appoint agents, clerks, engineers, superintendents, and other officers and servants for said company; shall keep a journal of their proceedings; shall cause correct books and accounts to be kept. They may determine by law what number of directors shall constitute a quorum, and may appoint committees, fill all vacancies in any office under said company; they shall fix the salaries of the president and the officers and agents; they may take security from their officers and agents and may adopt such measures and do such acts as will be best calculated to promote the prosperity and usefulness of said company.

§ 6. The directors shall make and advertise calls for the payment of the capital stock at such times and in such manner as they may deem proper, and if any stockholder shall fail to pay any such requisition within ten days after the time appointed the said company may recover the, same with interest, and if not collected may declare the stock forfeited and sell the same, and no delinquent stockholder shall vote in said company.

§ 7. Said company shall have full power to survey, mark, locate, and construct a railroad from the city of St. Charles, in the county of St. Charles, passing up the divide between the tributaries of the Mississippi and Missouri rivers, as near as may be, to the northern boundary line of this State, with a view that the same may be hereafter continued northwardly into the State of Iowa in the direction of Fort Des Moines in that State, and for that purpose may hold a strip of land not exceeding one hundred feet in width,with as many set of tracks as the said president and directors may deem necessary: Provided, That in passing hills or valleys the
99 said company are authorized to extend said width in order to effect said object, and may also hold sufficient land for the erection of depots, warehouses and water stations and may extend branch railroads to any point in any of the counties through which said road may be located.

§ 8. Said company may take voluntary relinquishments of the right of way for said road and the necessary depots and water stations; and if the land through which such road shall pass shall belong to minors in whole or in ipart the guardian or curator of such minor shall have power to convey to said company so much of the land as may be necessary for the purposes aforesaid, on fair and equitable terms; but every such conveyance by a guardian shall be subject to the approval or rejection of the probate or county court in which such guardianship is pending.

§ 9. If any owner of any tract of land through which such railroad shall pass shall refuse to relinquish the right of way for said road to said company, or if the owners be infants or persons of unsound mind or non-residents of the State, the facts of the case shall be specifically stated to the judge of the circuit court of the county in which such lands are situated, and said judge shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the land and the advantages and disadvantages of the road to the same, and shall report under oath what damages will be due to said land or any improvements thereon, stating the amount of damages assessed, and shall return a plat of the land thus condemned; notice of such application
100 to such judge shall be given to the owner of such lands five days before the making of the application, if such owner reside in this State, or to his guardian; and if such owner be a non-resident of this State he may (be) served with actual notice, or by an advertisement for four weeks in some public newspaper.

§ 10. The persons appointed to view and value such land shall file their report and plat in the office of the clerk of the circuit court of the county in which the land or a part thereof is situated, and

if no valid objection be made to said report the court shall enter judgment in favor of such owner against such company for the amount of damages assessed, and shall make an order vesting in said company the fee simple title of the land in such plat and report described; objections to such report must be filed within ten days after the same shall be filed, which objections shall be examined by said judge in term time or vacation, and he may hear testimony and by judgment confirm said report or may set the same aside and appoint three other viewers, who shall proceed in the same manner and make their report until a report is confirmed: Provided, in order that the progress of the work may not be impeded, That after said viewers have filed their report and plat in the office as aforesaid the company, after having made a tender of the amount of damages to the person or persons or made a deposit of the same with the clerk of the county court in which the case may be pending, shall be authorized to proceed in the constitution (construction) of the work as fully as though no disagreement had arisen. In all such cases the court shall adjudge the costs of the proceedings according to equity, and the court shall have power to make such orders and take
101 such other steps as will promote the ends of justice between the owners of such lands and said company.

§ 11. Said company may build said road along or across any State or county road or street or wharves of any town or city and over any stream or highway, but whenever said road shall cross any State or county road said company shall keep good and sufficient causeways or other adequate facilities for crossing the same, and said railroad shall not be so constructed as to prevent the public from using any road, street, or highway along or across which it may pass, and when said railroad shall be built across any navigable stream said company shall erect a bridge, sufficiently high, on which to cross, or shall construct a drawbridge (the Missouri river excepted), so that in no case shall the free navigation of such stream be obstructed. When any person shall own land on both sides of said road said company, when required so to do, may make and keep in good repair one causeway or other adequate means of crossing the same.

§ 12. Said company shall commence the construction of said road within nine years, and shall complete the same within twenty years thereafter, and said company shall have general power to use, manage, control, and enjoy said road; shall determine what kind of carriages shall be used thereon and by whom and in what manner, and shall determine the terms, conditions, and manner in which merchandise, property, and passengers shall be transferred (transported), and shall have power to construct and keep such turn-outs, gates, bridges, culverts, toll-houses, depots, warehouses, causeways, and other buildings, machinery, and fixtures as may be nec-
102 essary; said company may receive such tolls and freights as may be determined upon by the directors, and shall keep posted up estimates of the rates of toll and freight to be charged.

§ 13. Dividends of the profits of said company shall be made annually, or oftener if necessary, but the directors may reserve or set

apart a portion of the profits as contingent fund to meet expenses and losses.

§ 14. It shall be lawful for the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said company, and it may invest its funds in the stock of said company and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interests and credit of the county. Such county court may appoint an agent to represent the county, vote for it, and receive its dividends; and (any) incorporated city, town, or incorporated company may subscribe to the stock to said railroad company and appoint an agent to represent its interests, give its vote, and receive its demands (dividends), and may take proper steps to guard and protect the interests in (of) such city, town, or corporation.

§ 15. At any annual meeting of said company the directors shall make to the stockholders an exhibit of the affairs and conditions of the company. One-tenth part in interest of all (the) stockholders may call a meeting by giving four weeks' notice in two public newspapers.

§ 16. When said road shall be completed the company shall file a plat thereof in the office of secretary of state, and the Legis-
103 lature may at any time require a statement from the company as to the progress of the work, the amount of business, and the receipts of the company; and the books and accounts of said company at any time (may) be investigated by a committee appointed by the General Assembly.

§ 17. Said company shall keep a fair record of the whole expense of constructing said road, and at the end of fifty years the State shall be at liberty to purchase said road by paying to said company the amount which it shall be valued (at) by persons to be mutually chosen by the State and by said company, but two years' notice shall be given to said company of the intention of the State to purchase said railroad.

§ 18. When any person shall cease to be a stockholder he shall cease to be a member of said company.

§ 19. If any person shall wilfully injure, obstruct, or destroy said railroad or shall break, destroy, or deface any work, edifice, or other fixture or improvement belonging to said company he shall be considered guilty of a criminal offence, and shall be punished in such manner as shall be prescribed by law, and shall also be liable to said company for all damages by it sustained.

§ 20. The operations of said company shall be confined to the general business of locating, constructing, making, and using said railroad and the acts necessary or proper to carry the same into complete and successful operation.

§ 21. The stock of said company shall be considered personal property and shall be assignable and transferable according to such rules and restrictions as the board of directors shall from
104 time to time make and establish, subject, however, to the laws of this State as the same exist or may be changed hereafter. In case that it shall happen at any time that an election of directors

should not be made on any day when pursuant to this act or any regulations of said company it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but it shall and may be lawful on any other day to make and hold an election of directors in such manner as shall be regulated by the by-laws and ordinances of the company.

§ 22. Said company shall have power to receive and hold loans, gifts, grants, and donations of land, money, or bonds in any quantity from this State or the United States, and may sell, convey, pledge, mortgage, or otherwise dispose of said lands, money, or bonds, or any part thereof, and apply the proceeds of the same to the construction of said railroad.

This act to take effect and be in force from and after its passage.

Approved March 3, 1851.

I desire next to introduce an act of the Legislature of Missouri, approved February 19, 1866, entitled "An act to amend an act to incorporate the Alexandria & Bloomfield Railroad Co.," approved February 9, 1857, by authorizing said company to change the incorporate name and to extend said road from a point near Luray, in said county, to Nebraska City, Nebraska Territory, by way of Rockport, near Atchison, and to adopt any and all sections of this act, the same to be binding on said railroad company.

Said act is in the words and figures following, to wit:

105 An act to amend an act entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri, and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company."

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. That the Alexandria and Bloomfield Railroad Company may change the corporate name of said company to that of the Alexandria and the Nebraska City railroad.

§ 2. That said railroad company may extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska City, in Nebraska Territory, on the most practicable and direct route by way of or near Rockport, in Atchison county, Missouri.

§ 3. That said company may consolidate said road or make any running arrangement with any railroad now constructed, or that may be hereafter constructed, in the State of Missouri such as may be mutually agreed upon by the proper contracting parties connected with said railroad or roads.

§ 4. That the whole of this act or any section thereof as shall be adopted by the board of directors of the Alexandria and Bloomfield

Railroad Company at any meeting of said board called for
106 that purpose by the order of the board or a majority of said board, the secretary having given thirty days' previous notice in writing to each director, stating fully the object of said meeting, shall be in force from and after its adoption.

§ 5. This act to take effect and be in force from and after its passage.

Approved February 19th, 1866.

Mr. CUNNINGHAM: I desire to note that we plead the unconstitutionality of that act, and object to it for the reasons set forth in our pleading, that it is repugnant to the organic law of the State of Missouri.

The COURT: That has been passed on by the Supreme Court of the United States in the Thomas case.

Mr. CUNNINGHAM: I make that objection and, further, that there is no relevancy shown to this case in that act.

Mr. OVERALL: We next offer in evidence the articles of consolidation of the Alexandria & Nebraska City, formerly the Alexandria & Bloomfield railroad and the Iowa Southern railroad, duly certified by the secretary of state.

Said articles of consolidation are in the words and figures following, to wit:

Articles of Consolidation.

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of consolidation of the "Iowa Southern Railway Company" and the "Alexandria and Nebraska City Railroad Company" under the name and style of the "Missouri, Iowa
107 and Nebraska Railway Company," filed May 11th, 1870, as appears by comparing the same with the original of said articles now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal.

Done at office this ninth day of September, A. D. eighteen hundred and seventy-three.

[SEAL.] EUGENE F. WEIGEL,
Secretary of State.

Articles of Consolidation.

Articles of consolidation made and entered into this twenth-sixth day of March, in the year of our Lord one thousand eight hundred and seventy, between the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa, and the Alexandria & Nebraska City Railroad Company, a corporation existing under the laws of the State of Missouri.

Whereas the railways respectively owned by the said companies above named constitute a continuous line of railway for the passage

of cars from the city of Alexandria, in the State of Missouri, to a point on the Missouri river in Iowa near Nebraska City, in the State of Nebraska, and the directors of the said companies, upon mature consideration, have determined that the interests of the respective stockholders of said companies and the public interests and convenience will be greatly promoted by the union of their several roads into one road and by the consolidation of the respective stocks of said companies into one common consolidated stock;

108 And whereas the said companies are authorized by acts of the Legislatures of the said States of Iowa and Missouri to effect such union of their respective roads and to form by consolidation of their respective rights and franchises one company, and have agreed so to do upon the terms and conditions hereinafter mentioned and contained:

Now, therefore, this agreement, made by and between the corporations above named, parties hereto under and by virtue of the authority conferred upon them by the laws of the said several States, witnesseth: That the said Iowa Southern Railway Company and the said Alexandria and Nebraska City Railroad Company do agree and each for itself doth severally agree that the said companies shall be consolidated into and form one corporation under the name and style of the "Missouri, Iowa and Nebraska Railway Company," and in pursuance of the said acts of the Legislatures of the said States of Iowa and Missouri the said parties hereto do hereby prescribe the following terms and conditions of the said consolidation, and do respectively agree thereto and to the mode of carrying the same into effect, as herein provided for:

Article 1st.

The directors of said Missouri, Iowa and Nebraska Railway Company shall be for the present thirteen in number, which said number may at any future election held by the stockholders, by a resolution first passed by a two-third vote of said stockholders, be reduced to nine in number, all of whom said directors shall be stockholders in the corporation. The following-named persons shall con-

109 stitute the first board of directors of said Missouri, Iowa and Nebraska Railway Company, James Fitzhenry, Geo. M. Ochiltree, E. Pratt Buell, Peter W. Plantz, Enoch Hinckley, William Bradley, S. A. Dickey, C. H. Howell, John A. Talbot, Jacob Rummell, C. W. Bowen, James A. Breazeale, and F. M. Drake, and shall hold their offices until the first Monday in January, A. D. 1871, as provided and in accordance with the provisions of this article.

Article 2nd.

Said directors shall at their first meeting after their election elect a president and vice-president from their own number, and shall also then, or as soon thereafter as convenient, elect or appoint a secretary, treasurer, and superintendent of said company, and provide for the appointment of such other officers, engineers, clerks, agents, assistants, and other employees as they shall from time to time find necessary for the proper transaction of the business of said company.

Article 3rd.

The annual election of directors shall be held on the first Monday of January of each year at Centerville, Iowa, provided, if such election be not held as aforesaid, it may be held at any subsequent period, of which three weeks' notice shall be given in two newspapers on the line of said road, one of which shall be published at Centerville, Iowa, or wherever the principal place of business may at the time of said publication be, and the other in Missouri, unless said principal place of business should be in Missouri, in which case the publication should be in Iowa. The persons receiving the highest number of votes shall be directors to succeed those whose term of office shall have expired.

110 Article 4th.

Each stockholder shall be entitled to vote, in person or by proxy duly authorized, one vote for each share of stock he may own at the commencement of each election.

Article 5th.

After the consolidation herein provided for is perfected stockholders in said consolidated company only by surrender and exchange of their certificates in their several companies shall be entitled to vote at any meeting of the stockholders of said consolidated company.

Article 6th.

The capital stock of said Missouri, Iowa and Nebraska Railway Company shall be thirteen millions of dollars, to be divided into one hundred and thirty thousand shares of one hundred dollars each, and the directors may increase the capital stock thereof when necessary upon the approval of a majority of the stockholders of said consolidated company.

Article 7th.

The private property of the stockholders is hereby exempted from liability for the debts of the company except to the amount of the unpaid instalments of any stockholder. The stock of said corporation shall be transferable under such rules and regulations as may be deemed expedient by the board of directors.

Article 8th.

Upon the surrender of the present certificates of stock now issued and outstanding of either of the companies herein consolidated a like amount of the stock at par of the consolidated company
111 shall without delay after its consolidation be issued in return therefor to the holders thereof.

Article 9th.

In all cases in which subscriptions or agreements with either of said companies, parties hereto, for the stock of either of said compa-

nies have been heretofore made by any person or persons or bodies politic or corporate and said subscriptions or contracts for stock yet remain unpaid or unperformed, either in whole or in part, the stock of said consolidated company shall, upon payment of said subscriptions or performance of said contracts, be issued to the said subscribers in the same manner as the several companies, parties hereto, would have been bound to issue their stock respectively had not this consolidation taken effect.

Article 10th.

All and singular the rights and franchises, privileges, real estate, depot grounds, rights of way, road-bed, railway, iron rails, engines, cars, machinery, rolling stock, debts, dues, demands, choses in action, and property of every description, name, and nature in which the said Iowa Southern Railway Company and the Alexandria and Nebraska City Railroad Company have respectively any rights, title, or interest, whether in possession, reversion, or remainder, with the appurtenances, upon the ratification of these articles of consolidation as herein and by law provided for and from thenceforth, shall be held, owned, and controlled by the said Missouri, Iowa and Nebraska Railway Company, their successors and assigns, as fully and completely to all intents and purposes as the said several companies do or can now hold, own, use, or control the same, and no further conveyance or assurance shall be required for the full and com-
112 plete vesting thereof in said Missouri, Iowa and Nebraska Railway Company.

Article 11th.

All the books, vouchers, records, muniments of title, and other documents pertaining to the business or property of the said several companies, parties hereto, shall be placed in the office of the secretary of said consolidated company, and the said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if the same had remained in the office of the original companies.

Article 12th.

The principal place of transacting the business of the consolidated company shall be at Centerville, Appanoose county, Iowa, which place of business may be changed to any other point on said line at any time in accordance with the provisions of article sixteen of the articles of incorporation of said Iowa Southern Railway Company.

Article 13th.

The line of the consolidated railway shall extend continuously from the city of Alexandria, Clarke county, Missouri, on the Mississippi river, its eastern terminus, as the same is now located and partially graded to Centerville, in Appanoose county, Iowa, thence west to the Missouri river, as contemplated by the charter of the Iowa Southern Railway Company, and the said consolidated com-

pany shall complete and put in operation said line of railway from the city of Alexandria, Missouri, to Centerville, Iowa, and from thence westward to the Missouri river as soon as practicable, and shall continue to maintain and operate said railway as a first-class road at, from, and between the said termini throughout its
113 entire length during the corporate existence of the said consolidated company.

Article 14th.

The said consolidated company shall fulfill and finally settle, pay, and dismiss all debts owing and all contracts and agreements or other obligations entered into by either of said companies of every kind and nature, legal and equitable.

Article 15th.

In order to facilitate the settlement of all claims, debts, or obligations of either of the companies parties hereto and properly protect the interests of all parties interested it is agreed that an auditing committee from each of said companies, parties hereto, consisting of three members each, shall be appointed to audit and allow all just claims against these said respective companies, or such amounts thereof as they shall find just and equitable; the said committee for the auditing of the claims against the Iowa Southern Railway Company shall consist of C. W. Bowen, Jacob Rummell, and John A. Talbot, and the said committee for auditing of the claims of the Alexandria and Nebraska City Railroad Company shall consist of James Fitzhenry, Geo. M. Ochiltree, and Enoch Hinckley.

Article 16th.

The consolidated company, in order to raise money necessary to construct, complete, equip, and operate the line of railway formed by the consolidation and every part thereof, shall have the right and power to borrow money to an amount not exceeding two-thirds of the capital stock, and to issue the bonds of the consolidated company therefor, and to secure the payment of the same by a first
114 mortgage or deed of trust on all the property, rights, and franchises of the said consolidated company lying between the Mississippi and Missouri rivers, in the States of Missouri and Iowa.

Article 17th.

It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said companies, parties hereto, at a meeting thereof called separately for the purpose of taking the same into consideration; due notice of the time and place of such meeting and the object thereof shall be given; the time of such meeting of the stockholders of the Iowa Southern Railway Company shall be on the 23rd day of April, A. D. 1870, and the place the town of Centerville, Appanoose county, Iowa; the time of such meeting of the stockholders of the said Alexandria and Nebraska City Railroad

Company shall be on the 2nd day of May, A. D. 1870; the place the city of Alexandria, in the State of Missouri.

Article 18th.

In witness whereof the corporate seals — the respective companies, parties to this agreement, have been hereunto affixed in quadruplicate by order and in the presence of the directors of each of said companies duly convened, a quorum of each of the said board of directors being so present and assenting thereto, and is attested by their respective signatures hereto on behalf and by order of said boards of directors, and the president of each of said companies have also at the same time and in behalf of the said respective companies hereto affixed their names in virtue of resolution of said several boards of directors passed at respective meetings thereof.

115 [SEAL.] IOWA SOUTHERN RAILWAY COMPANY,
By F. M. DRAKE, *President.*

Attest: C. W. BOWEN, *Secretary.*

F. M. DRAKE,
C. W. BOWEN,
WM. BRODLER,
J. A. BREAZEALE,
JOHN A. TALBOT,
S. DICKEY,
JACOB RUMMELL,
C. H. HOWELL,
Directors of the Iowa Southern Railway Company.

[SEAL.] ALEXANDRIA & NEBRASKA CITY R. R. CO.,
By E. PRATT BUELL, *President.*

Attest: P. W. PLANTZ, *Secretary.*

E. PRATT BUELL,
G. M. OCHILTREE,
E. HINCKLEY,
S. M. YOUNG,
P. W. PLANTZ,
Directors of the Alexandria and Nebraska City Railroad Company.

I, C. W. Bowen, secretary of the Iowa Southern Railway Company, do hereby certify that in pursuance of notices published in the "Loyal Citizen," a newspaper published in the town of Centerville, Appanoose county, Iowa, principal office and place of business of said company, also in a newspaper published in the town of Bloomfield, in the county of Davis and State of Iowa, through
116 which counties the line of said company is established and the road is run, the stockholders of said company met at said company's office, in the town of Centerville aforesaid, on Saturday, the 23rd day of April, 1870, to take into consideration the within — foregoing agreement, and they then and there proceeded to

vote by ballot for the adoption or rejection of said agreement; that at said meeting 8,755 votes were cast, each vote representing one share of stock; that all of the 8,755 votes so cast were cast in favor of the edoption of said agreement and that none of said votes were cast against its adoption, and that the entire number of shares of stock of said company is 10,280, and that therefore the stock so voted as aforesaid in favor of said agreement is more than four-fifths of the entire stock subscribed of the company.

In witness whereof I have hereunto set my hand and affixed the seal of the said company, at Centerville, Iowa, this 23rd day of April, A. D. 1870.

[SEAL.] C. W. BOWEN,
Secretary of the Iowa Southern Railway Company.

I, P. W. Plantz, secretary of the Alexandria and Nebraska City Railroad Company, do hereby certify that in pursuance of the notice published in the Alexandria Commercial, a newspaper printed and published in the city of Alexandria, Clarke county, in the State of Missouri (the principal office and place of business of said company being in said city of Alexandria), the stockholders of said company met at the Pearl-Street House, in the said city of Alexandria, on Monday, the 2d day of May, 1870, to take into consideration the within and foregoing agreement, and they then and there proceeded to vote by ballot for the approval or disapproval of said agree-
117 ment; that at said meeting 4,873 votes were cast, each vote representing one share of stock; that all of the 4,873 votes so cast were cast in favor of the approval and adoption of said agreement and that none of said votes were cast against its approval and adoption, and that the entire number of shares of stock of said company does not exceed 6,750, and that therefore the stock so voted as aforesaid in favor of said agreement is more than two-thirds of the entire stock of the company.

And I further certify that on the same day and immediately after the meeting of the said stockholders had adjourned the board of directors of the Alexandria and Nebraska City Railroad Company met, as required by law, to carry the said vote and agreement into effect, and did adopt the name of the "Missouri, Iowa and Nebraska Railway Company" as the corporate name for the consolidated company, and did call in the certificates of stock outstanding in said Alexandria and Nebraska City Railroad Company to be exchanged for stock in the said new company by ordering and directing notice to be given to holders of said outstanding certificates of stock to present the same to P. W. Plants, the secretary of the said Alexandria & Nebraska City Railroad Company, to be so exchanged on or before the first day of July, 1870.

In witness whereof I have hereunto set my hand and affixed the seal of the Alexandria and Nebraska City Railroad Company this third day of May, A. D. 1870.

[SEAL.] P. W. PLANTZ,
Secretary of the Alexandria & Nebraska City Railroad Company.

Endorsed: Articles of consolidation of the (1612) "Iowa Southern Railway Company" and the "Alexandria and Nebraska City Railroad Company," under the name and style of the Missouri, Iowa and Nebraska Railway Company. Recorded on pages 267, 268,
118 269, 270, 271, 272, 273, 274, and 275, Book Railroad Associations, vol. I. Filed May 11th, 1870. Francis Rodman, sec'y of state. Filed Oct. 12, 1880. M. M. Price, cl.

Another endorsement: "1153 & 1287. Filed Oct. 14, 1885. A. P. Selby, clerk."

119 Mr. CUNNINGHAM: I desire to object to this evidence because it is irrelevant; there is no showing of any connection between the two companies named here as being consolidated and the company under which they claim a charter power. I claim that, even admitting, as I deny, that the act of 1866 is constitutional and valid, upon its face it declares it shall not be operative until it has been accepted by the company. Where is there any proof of its acceptance? That is a condition precedent. The Legislature made a law and said this law shall become operative as to one or more sections when accepted. They have offered proof of its acceptance.

The court overruled said objections and admitted said articles of consolidation in evidence; to which ruling of the court the defendant then and there excepted.

The COURT: What is the language of the act?

Mr. OVERALL: That is the language of the act, and, further, we will show, when we offer the bonds sued on, the defendant recognizes this consolidated road, the Missouri, Iowa and Nebraska, as a road consolidated with the two roads, the Alexandria & Nebraska City, formerly the Alexandria & Bloomfield, and the Iowa Southern.

The COURT: You better read the recital to some one of your bonds.

Mr. OVERALL: Yes, sir; I will read it from the book. His answer also sets it up and says the same thing.

Mr. CUNNINGHAM: I deny it.

The COURT: Read the recital of the bond.

Mr. OVERALL: For convenience I will read out of the record of the Supreme Court of the United States a statement in the bond.

120 Mr. CUNNINGHAM: I do not desire it to go to the jury.

The COURT: I am asking for my information that I may understand what the recitals are. The bond is not proved yet, of course.

Said recital is in the words and figures following, to wit:

Recital of Bond.

"$1,000. UNITED STATES OF AMERICA. No. 4.

"Eight per cent. railroad bond.

"County of Scotland. Twenty-five years.

"Know all men by these presents that the County of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri,

Iowa and Nebraska Railway Company, a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company (formerly Alexandria and Bloomfield Railroad Company), of the State of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company, or bearer, at the Farmers' Loan and Trust Company, New York, on the thirty-first day of December, A. D. 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually in the city of New York on the thirty-first day of December in each year as the same shall become due, on the presentation of the coupon hereto annexed, this bond being issued under and pursuant to an order of the county court of said Scotland county

121 for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved Feb. 9, 1857:

"In testimony whereof the said County of Scotland has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and the clerk of said court, under the order thereof, attesting the same, and affixing thereto the seal of said court. This done, at the town of Memphis, in the county of Scotland, in the State of Missouri, this first day of September, A. D. 1870.

"WILLIAM DAWSON,
"*Presiding Justice of the County Court of Scotland County, Mo.*

"Attest: [SEAL.] STERLING McDONALD,
"*Clerk of the County Court of Scotland County, Mo.*"

Countersigned and delivered this 20th day of September, 1871.
CHARLE- METZ, *Trustee.*

122 The COURT: This bond purported to be issued to the consolidated company?

Mr. OVERALL: Yes; we wish to introduce next an order of the county court of Scotland county of the 9th of August, 1870.

The COURT: What is the date of this bond?

Mr. OVERALL: September 1st, 1870.

The COURT: What is the date of that order?

Mr. OVERALL: The 9th of August, 1870. This is an order authorizing the subscription and issuance of the bonds—a certified copy of the record of the county court of Scotland county.

Said record is in the words and figures following, to wit:

Record of the Scotland County Co. Court. Aug. 9, 1870.

"Certified copy of record."

In the County Court of Scotland County.

STATE OF MISSOURI, *County of Scotland,* } ss:

In the county court of Scotland county, at the August term, 1870, held on the ninth (9th) day of August, 1870, amongst others, were the following proceedings:

"At this day a petition was presented to the court, signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Gwynne, R. P. Wayland, and divers other persons, to the number of thirteen hundred and sixty-five, tax-payers and residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock to the Missouri, Iowa and Nebraska Railway Company, payable in county bonds, due twenty-five years from date, bearing interest at the rate of eight per cent. per annum, payable annually, commencing from date of compliance of contract on the part of the company of said railroad.

123 Now, therefore, in consideration of the prayer of said petitioners, and in pursuance and by virtue of law and the power therein given to the court to subscribe in said railway company, it is ordered by the court that the county of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company, payable in the bonds of said county of the denomination — one thousand dollars each, due twenty-five years from the date of issue, and bearing eight per cent. interest per annum, the interest payable annually in the city of New York, on the — terms and conditions, to wit: One hundred thousand dollars of said bonds to be delivered to said railway company when said road shall have been graded, bridged, and tied, the track laid, and the cars running thereon from Alexandria, Missouri, to a permanent depot located within one-half mile of the court-house in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have thus completed their said line of road from Memphis to the west or north line of said county and the cars are running over the same through said county. (Provided said railroad shall be so located as to miss the west line and strike the north line of said county, it shall do so at a point not exceeding four miles east of the northwest corner of said county.) Said railroad shall be so built and the cars running thereon as aforesaid within two years from the date of this order; otherwise said subscription shall be null and void; and it is ordered further that Henry M. Gorin be, and he is hereby, appointed agent for said

county of Scotland to subscribe the stock of said county upon
124 the books of said company, to represent said county at the meetings of the stockholders of said company, to cast the vote of said county, and to receive its dividends.

And in order that the interests of the people may be fully guarded the court doth appoint, as trustee, Charles Mety, of said county, whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued and to have custody of the same, and as soon as the said railway company shall have complied with the stipulations above set forth the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company, and shall at the same time receive from said treasurer or other agent of said company an equal amount in certificates of stock of the said railway company, which said certificates of stock the said trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his action, shall be presented to the county court at the next term thereafter, and the said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security to be approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trust.

And it is further ordered by the court that the county attorney for said county shall proceed to have said bonds printed and lithographed and that the presiding justice of the county court of said county shall sign the same and the clerk of the county court of said county shall make the proper attestation of his signature,
125 and that the said bonds shall — annual coupons attached, and the trustee shall when he delivers said bonds to said railway company detach any or all coupons for interest that may have past maturity and cancel and return the same to the treasurer of said county when his report as aforesaid is made, and shall enter upon the next maturing coupon on said bonds the date of delivery to said company in order that said company shall receive interest only from the date they are entitled to receive said bonds.

It is further provided that said railway company shall pay all the expenses of lithographing and printing said bonds.

(Signed) WILLIAM DAWSON, *President.*

A true copy from the records of said court.

Witness my hand and the seal of said court this tenth day of May, 1883.

[SEAL.] JOS. G. BEST,
County Clerk.

I further certify that the words "and the cars are running over the same through said county," between the 9th and 10th lines on 2d page, and the word "date," between the 15th and 16th lines on

2d page, and the word "county," between the 12th and 13th lines on 3d page, were inserted by me before certifying this copy.

[SEAL.] JOS. G. BEST,
Clerk of the County Court.

Endorsed: "1153 & 1287. Filed Oct. 14, 1885. A. P. Selby, clerk."

126 Mr. CUNNINGHAM: I object to this as incompetent.

Mr. OVERALL: I also offer in evidence a duly certified copy from the records of the county court of Scotland county—the proceedings of the 11th of December, 1871. Part of these bonds, $100,000 of them, had been delivered in the first place, and then comes another order for the delivery of the second $100,000.

Mr. CUNNINGHAM: I make the same objection.

(The order was read as follows:)

Record Entry of the 11th December, 1871, Scotland Co. County Court.

Certified copy of record.

November Adjourned Term, 1871.

STATE OF MISSOURI, }
County of Scotland, } *ss:*

In the county court of said county, on the eleventh day of December, 1871, the following, among other, proceedings, were had, viz:

"Ordered, That so much of the order of this court made heretofore, to wit, at the August term of this court, A. D. 1870 (which order provided for the issue of two hundred thousand dollars of the bonds of said county of Scotland to the Missouri, Iowa and Nebraska Railway Company upon the terms and conditions specified in said order), as is embraced in the following words, to wit: "And the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have completed their said line of railroad from Memphis to the west or north line of said county and the cars are running over the same, through said county; provided said railroad shall be so located as to miss the west line and strike the north line of said county, it shall do so at a
127 point not exceeding four miles east of the northwest corner of said county said railroad shall be so built and the cars so running thereon as aforesaid within two years from the date of this order," be so far modified as to authorize and direct Charles Mety, Esq'r, trustee for said county, nominated and appointed in said order of this court, and said Charles Mety, trustee, is hereby authorized, empowered, and directed, upon full compliance by the said Missouri, Iowa and Nebraska Railway Company of the terms and stipulations hereinafter set forth, to surrender immediately to said Missouri, Iowa and Nebraska Railway Company or their duly authorized agent for that purpose the one hundred thousand dollars of the bonds of Scotland county aforesaid provided for and issued to said Charles Mety as trustee under and by virtue of the terms of the

order of this court heretofore made in the premises as aforesaid, and upon the following express conditions—that is to say: The said Missouri, Iowa and Nebraska Railway Company shall execute to said Charles Mety, Esq., trustee as aforesaid, upon receiving said bonds as aforesaid, a good and sufficient receipt for the same, and shall furthermore deliver to him, the said Charles Mety, Esq., trustee, a good and sufficient bond of indemnification to the said Charles Mety, trustee, and to the said county of Scotland to the acceptance of the said Mety; the conditions of which said obligation shall be that:

1st. The said Charles Mety, trustee, shall before issuing said
128 one hundred thousand dollars of said bonds or any of them cancel and detach from each of said bonds so to be delivered the coupons to each of said bonds attached for all interest due or to become due on said bonds and each of them to and on the 31st day of December, A. D. 1871, and said bonds shall only be surrendered and transferred by said Charles Mety, trustee, to said Missouri, Iowa and Nebraska Railway Company after said coupons for the interest thereon for the year 1871 have been so detached from them and each of them as aforesaid.

2d. That the said Missouri, Iowa and Nebraska Railway Company shall by the 31st day of December, A. D. 1871, complete the said railway to the western boundary line of said county of Scotland, have the same bridged, tied, the iron laid, and the cars running thereon to that point, according to the provisions and conditions of the order of this court heretofore made as aforesaid; and, furthermore, if said Missouri, Iowa and Nebraska Railway Company shall not have so as aforesaid completed their railroad and the cars running thereon to said western boundary line of Scotland county by said 31st day of December, A. D. 1871, then and in that case the said Missouri, Iowa and Nebraska Railway Company are to make all necessary provisions for the interest then and thereafter accruing upon said one hundred thousand dollars of bonds so to be issued to them as aforesaid from and after the 1st day of January, A. D. 1872, and until such time as said railroad shall be so completed and the cars running thereon to the said western boundary line of said county, as is provided in said order of this court heretofore made in the premises, to the end that in no event shall said county of
Scotland or said Charles Mety, Esq'r, trustee, be or become
129 responsible for interest on said one hundred thousand dollars of bonds until the said railroad shall be completed and the cars running thereon to the said western boundary line of said county of Scotland.

3d. The said Missouri, Iowa and Nebraska Railway Company shall pay or cause to be paid at maturity the interest now due or which shall become due on the bonds heretofore issued by said county of Scotland to said Missouri, Iowa and Nebraska Railway Company on the 31st day of December, A. D. 1871, at the city of New York, and shall accept therefor and in discharge thereof the warrants of this court, drawn on the county treasurer, payable when and as requisite funds shall be in the treasury of said county appli-

cable to the payment of the same; and when said interest has been so paid as aforesaid and said railroad company shall receive said warrants in payment thereof the coupons for such interest so paid off and discharged shall all be cancelled and returned to the clerk of this court, who will receipt for and file the same.

4th. And the said Missouri, Iowa and Nebraska Railway Company shall furthermore guarantee, so far as may be necessary, that it will protect the interests of the said county of Scotland and State of Missouri and the said Charles Mety, Esq., trustee as aforesaid, in accordance with the order of this court heretofore made in the premises, then said bond of indemnification shall be void.

5th. That Charles Mety, Esq'r, trustee, make report of his proceedings as such trustee in the premises to this court as soon as the provisions of this order be complied with, and that he transmit with said report such receipts and other evidences as he may have in his possession of his action in the premises.

130 STATE OF MISSOURI, } ss.:
County of Scotland, }

I, Jos. G. Best, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year written above as the same appears of record in my office, and that the word "so" in the 17th line of the first page and the word "due" on 4th line and word "said" on 32d line of second page were interlined before certifying.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Memphis, this the 29th day of September, 1885.

[SEAL.]

JOS. G. BEST,
Clerk County Court,
By —— ——, *D. C.*

Endorsed: "1153 & 1287. No. —. Certified copy of order of — court, made at ——. Term, 18—. In the matter of orders of subscriptions, &c. Filed Oct. 14, 1885. A. P. Selby, clerk."

Mr. CUNNINGHAM: We deny the execution of the instrument sued on; we deny that they were detached from bonds, and that even if they were that there was a certain judgment rendered by which the courts of Missouri declared them null and void and the supreme court of Missouri confirmed it.

Mr. OVERALL: This suit was brought in 1878 before the statute of 1879 was passed, and there was no affidavit as required by law at the time the suit was brought; hence that was an admission of the factum of the instrument at the time of filing the answer.

131 Mr. CUNNINGHAM: In answer to that we desire to say that this case has gone to the supreme court and has been reversed. That question was tried on the defenses here set up and the court sent the case back for a new trial, and when it came back we filed an amended answer in which we denied the execution.

The COURT: The supreme court passed on the question of notice.

Mr. CUNNINGHAM: And said it was a good defense.

The COURT: Your witnesses are here and they better prove it.

Mr. OVERALL: There is an agreement, which, I believe, is entered of record, agreeing to the consolidation of the first two Hill cases and a certain agreement concerning the ownership, etc., of coupons in these cases.

The COURT: Let it be read.

Mr. OVERALL: I will read the order, page 351 of Record Book H.

(Counsel then read as follows:)

Order Consolidating Cases 1153 & 1287.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1287.

SEPTEMBER 27TH, 1878.

By consent it is ordered that the above cases be consoli-
132 dated; that the plaintiff have leave until February 1st, 1879, to file amended petition and put in suit additional coupons, and that the entire number of coupons embraced in said petition may be put in two counts, and that defendant have leave to file answer on or before the first day of the next term; and thereupon it is ordered that said cases be continued until the next term of this court.

Mr. CUNNINGHAM. I desire to object, because the stipulation is on file and it shows the clerk did not enter up the whole stipulation. It adds, "reserving to the defendants the same right of defense as though they had sued separately." The stipulation contains those very important words, which the record omits.

Mr. OVERALL. The stipulation is here; if the gentleman wants to introduce it, it is all right.

The COURT. Are you going into the identification?

Mr. OVERALL. Yes.

The COURT. It is impossible for the jury to carry all that in their heads; I will give one a paper and let them follow the numbers.

Mr. OVERALL. We have the numbers of these in suit, and a juror can check them off.

Mr. CUNNINGHAM. I desire, to save time, to note my objection. Plaintiff offers in evidence certain bonds, the numbers of which have been given. Defendant objects because the authority for the execution of those bonds have not yet been sufficiently established. He objects also because the coupons upon which suit is predicated have not been offered in evidence nor proven to have been detached from any bond, nor proven to have been made by Scotland county.

133 The COURT. That is what I supposed this witness was introduced for.

Mr. CUNNINGHAM. I require they shall do that before the evidence is offered.

The COURT. As I understand, a witness is introduced for something; I do not know what. No bonds have been offered as yet.

Mr. CUNNINGHAM. Now, he says he offers them.

Mr. OVERALL. I want to prove those bonds and I propose to introduce a witness to prove the signatures of the officers to it.

The COURT. That is what I understand.

Mr. CUNNINGHAM. The shorthand report will show that he offered them. I wish to say in this connection that the last record of a judgment in this case was for $10,000 more than the parties were entitled to by reason of the slip-shod manner in which the case was conducted, and I wish to say that every coupon that is offered in this case costs us $80, and that I would be a traitor to the interests of my clients if I did not insist upon every rightful objection. I insist that every step of this case shall be proven, and if they claim they have coupons that they shall offer them, and if they offer them that they shall prove the execution of them, and shall prove if they offer a bond to the witness that that coupon has been detached from that bond before they ask him to testify about the execution of it, because until they have shown that the coupon was detached from that bond the bond itself is irrelevant and incompetent and has no relation to the case.

134 The COURT. As I understand the proposition, that is just what they are proposing to do. The bond is not offered until they make proof. It is a mere suggestion to the court. Now, they propose to prove the execution and the detachment of the coupon. The bonds are not offered as such yet, but they are proposing to prove the preliminary steps.

Mr. OVERALL. I wish to hand to the witness for identification this instrument.

The COURT. Give the number.

Mr. OVERALL. This is bond No. 4.

Sterling McDonald.

STERLING MCDONALD, being duly sworn on the part of the plaintiff, testified as follows:

By Mr. OVERALL:

Q. State what position you occupied in 1870 towards Scotland county.

A. I was clerk of the county court.

Q. When were you first elected clerk?

A. In November, 1866.

Q. How long did you remain clerk?

A. Until January 1st, 1879.

Q. You were clerk for 12 years?

A. Nearly 14.

Q. Through how many terms were you elected?

A. Three and part of another; I was appointed to fill a vacancy in the first place.

Q. And then afterwards you were re-elected three times?

A. Yes, sir.

Q. You were county clerk of Scotland county in September and December, 1870?

A. Yes, sir.

Q. Whose signature is to that instrument as county clerk?

135 A. That is mine, to the best of my belief, sir.

Q. And do you recognize the other signature there of the presiding justice?

A. Yes, sir; that is his.

Q. You have seen him write often?

A. Yes, sir.

Q. You know his handwriting, you think?

A. Yes, sir.

Q. Whose signature is it?

A. Judge Dawson's.

Q. What position did he occupy at that time?

Objected to.

Mr. CUNNINGHAM: We object; that is proven by the record.

The COURT: Was he acting?

WITNESS: He was presiding justice of the county court at that time.

Q. And that is his signature?

A. That is his signature.

Q. And the seal, I presume, proves itself the seal of the county court of Scotland county?

A. Yes, sir.

The COURT: He may as well prove it if he knows it.

Q. State if that is the seal of Scotland county?

A. Yes, sir.

Mr. OVERALL: Now, I offer to read this bond in evidence for the recitals contained in it.

Mr. CUNNINGHAM: I repeat the objection which I have made before.

The COURT: It will be read. Of course if there is a lack of authority that will be shown hereafter and the court will strike it out.

(The recital was then read as follows:)

Recital of Bond.

"$1,000. No. 4.

"UNITED STATES OF AMERICA.

"Eight per cent. railroad bond.

136 "County of Scotland. Twenty-five years.

"Know all men by these presents that the county of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa and Nebraska Railway Company, a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company (formerly Alexandria and Bloomfield Railroad Company) of the State of Missouri and the Iowa Southern Railway Company of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company, or bearer, at the Farmers' Loan and Trust Company, New York, on the thirty-first day of December, A. D., 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually in the city of New York on the thirty-first day of December in each year as the same shall become due on the presentation of the coupon hereto annexed, this bond being issued under and pursuant to an order of the county court of said Scotland county for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved Feb. 9, 1857.

"In testimony whereof the said county of Scotland has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto and the clerk of said court, under the order thereof, attesting the same and
137 affixing thereto the seal of said court.

"This done at the town of Memphis, in the county of Scotland, in the State of Missouri, this first day of September, A. D. 1870.

"WILLIAM DAWSON,

"*Presiding Justice of the County Court of Scotland County, Mo.*

"Attest: [SEAL.] STERLING McDONALD,

"*Clerk of the County Court of Scotland County, Mo.*"

Countersigned and delivered this 20th day of September, 1871.

CHARLES METZ, *Trustee.*

Q. Are you acquainted with Charles Mety?
A. Yes, sir.
Q. Do you know his signature?
A. I have seen it often.

Q. Seen him write often?
A. Yes, sir.
Q. Do you think you would know it if you saw it?
A. I believe so.
Q. Look at this and state whether that is his signature.
A. Yes, sir; I believe that is his handwriting.
Q. In your opinion, that is his signature?
A. Yes, sir.

Mr. OVERALL: "Countersigned and delivered this 20th day of September, 1871. (Signed) Charles Mety." Now, that was bond No. 4. I suppose it is hardly necessary to ask the same question about each one of these bonds?

Mr. CUNNINGHAM: I desire you to consider that the same objection has been made to each one; that you offer them subject to the same objection and exceptions.

Mr. OVERALL: Now, we offer each one of the bonds numbered in this petition and remaining after the dismissals, and I
138 will call them off: Bonds 1, 3, 4, 5, 6, 7, 4, 10, 11, 12, 38, 88, 90, 92, 135, 136, 137, 160.

Mr. CUNNINGHAM: You will find there is a different signature on all above 100. The plaintiff will no doubt admit after he reads 100 that every bond shows December 11, 1861, instead of September 20, and a different signature.

Mr. OVERALL: All these bonds are alike except above this number 100; they are marked "Countersigned and delivered September, 1871." It is the same signature, the only difference being in the date of delivery. Those above 100 have not the last order of the county court, which we read.

The COURT: This is in the Hill case?

Mr. OVERALL: Yes. (Counsel then continued to read the numbers as follows): 161, 162, 166, 173, 174, 176, 100, 196, 197, 193, 194, 195, Nos. 6, 25, 26, 27, 29, 30, 35, 36, 9, 13, 14, 15, 8, 7, 167, 163, 37, 192, 191, 99, 200, 199, 198, 177, 165, 164, 159, 158, 134, 133, 89, 84, 5, 190, 189, 188, 187, 179, 178, 142, 141, 140, 139, 138, 98, 97, 93, 85, 82, 81, 75, 70, 69, 68, 67, 66, 65, 64, 63, 57, 106, 105, 104, 103, 102, 101, 17, 18, 16.

The COURT: I understand, Mr. Cunningham, that you admit the signatures?

Mr. CUNNINGHAM: I admit nothing, but I am compelled to allow the witness to testify against my objection to that point. I do not require him to go over each one and admit that he will swear the same thing as to each bond as he swore to the first one. I do not admit anything, but it is understood this witness will swear in each one as he swore to No. 4, subject to my objections.

139 The COURT: That is understood, instead of having him swear to each one.

Mr. OVERALL (to a juror holding the list): Have you seen 39 and 40 on that list?

A JUROR: I have.

Mr. OVERALL: Erase them. Is 56 on that list?

A JUROR: Yes.

Mr. OVERALL: Has it been called?

A JUROR: No.

The COURT: You haven't offered 56?

Mr. OVERALL: Have you 1, 2, and 3 not called?

A JUROR: Not called.

Mr. OVERVLL: And 56 not called?

A JUROR: 56 not called.

Mr. OVERALL: 86 not called?

A JUROR: 86 not called; 145, 140, and 147 not called, and 175 not called.

Mr. OVERALL: Have you any others not called?

A JUROR: I have no others.

Mr. OVERALL: I would like to know whether we must introduce each one of these coupons separately.

Mr. CUNNINGHAM: I would like, in order to explain the position we occupy, to state that the records of our court show that during the pendency of this other case your honor, of course, gave judgment in the amount of the suit, and that could not be carried further, and that judgment was enforced by mandamus. I am advised that they paid the money under duress of the court under mandamus on the same numbers as are sued on, and our defense sets up this judgment that they got eight or ten years ago on these same coupons; that they were forced to pay by mandamus, and which they are suing on again, and therefore I am compelled to require that they prove every coupon, and that they prove that coupon was cut from a bond, because a coupon is merely a lithographed piece of paper.

Mr. OVERALL: I deny that there is a bond there which the county has paid.

The COURT: That is a later inquiry. The present is whether we should call for an identification of each coupon. I understand the counsel does so.

Mr. OVERALL: These coupons are filed in the office.

The COURT: They remain with the clerk.

Mr. OVERALL: As we have to identify and page them, the question is whether we can't have leave to withdraw them during the night to page them.

The COURT: If you take them it will be at your peril.

The court thereupon adjourned until to-morrow morning at 10 o'clock.

ST. LOUIS, *October 13th*, 1885.

The court met pursuant to adjournment and the hearing of this cause was resumed as follows:

Mr. OVERALL: There is on the list kept by the jury bond 175, which I omitted last evening. I understand bond No. 4 has been identified and each of the other bonds have been introduced, and that the same testimony shall be applicable as to each of the others.

Mr. CUNNINGHAM: Under the same objection to all the testimony that they made as to bond No 4.

141 Mr. OVERALL: I will ask the juror to put on his list bond 31. It is on our list, but in making a copy for your honor we left that out, No. 31, and the same evidence will be considered as heard in regard to this bond. There are eight bonds that will be proved by a deposition.

The examination of Mr. MCDONALD was resumed.

By Mr. OVERALL:

Q. Mr. McDonald, how many of these bonds were issued by the county of Scotland?

A. 200.

Q. Were they numbered in any order; and, if so, what order?

A. Numbered from one to 200.

Q. What was the denomination of each bond?

A. One thousand dollars.

Q. I hand you bond four; were there interest coupons attached to these bonds at the time of their execution?

A. Yes, sir.

Q. How many coupons were attached to each bond?

A. 25.

Q. I see a signature there of S. McDonald, county clerk. Is that your original signature or the lithographed signature?

A. That is a lithographed *fac-simile*.

Q. That is a lithographed *fac-simile* of your signature?

A. Yes, sir.

Q. And is that lithographed signature on each of the 25 coupons?

A. Yes, sir.

Q. Was there any mark on each of the coupons showing its number?

A. Yes, sir.

Q. Corresponding with the date of its maturity?

A. Yes, sir.

Q. Was there anything upon the coupons indicating the bond to which it belonged and for which it was an interest coupon?

A. Yes, sir.

142 Q. Just explain to the jury what numbers were on the coupons.

The COURT: Don't they show for themselves?

WITNESS: Yes.

The COURT: Take that bond for illustration; what is the number of that?

A. This is No. 4.

Q. Now, the coupons.

A. Numbered from one to 25 consecutively, and each of them has on it the number of the bond showing the bond it belongs to.

Q. And the water-line number is the number of the coupon and the small number is the number of the bond?

A. The coupon is 4.

The COURT: And the date of the coupon is stated there?

A. Yes, sir.

Mr. OVERALL: I will read one of the coupons sued on; examine this paper that I hand you.

Mr. CUNNINGHAM: I desire to record my objection that they have not proven that the papers now exhibited to the witness have been detached from any bond at all.

The COURT: I understand that, but they have to take some order.

Q. What is this paper I show you?
A. That is a coupon.
Q. From what bond?
A. That is coupon No. 3.
Q. From what bond?
A. No. 4.
Q. Is that this bond?
A. Yes, sir.

The COURT: When payable?

Q. When was that coupon payable?
A. December 31st, 1873.
Q. Was that coupon on this bond No. 4 at the time this bond was executed by the county, by its officers?
A. Yes, sir.

143 Mr. OVERALL: I now introduce this in evidence, coupon No. 3, detached from the bond, and I will read the coupon to show the jury how they are identified.

(Coupon was then read, as follows:)

"*Railroad Bond Coupon.*

MEMPHIS, MISSOURI, *September 1st*, 1870.

The county of Scotland, State of Missouri, will pay to the bearer on December 31st, 1873, at the Farmers' Loan and Trust Company, in New York, $80, being one year's interest on bond No. 4, for one thousand dollars.

(Signed) S. McDONALD,
County Clerk."

Mr. OVERALL: Now I offer this coupon in evidence.

Mr. CUNNINGHAM: I object.

The COURT: It will be received; take them *seriatim*.

Mr. CUNNINGHAM: We except to the ruling of the court.

Mr. OVERALL: The jury will see that is coupon 3. Now, I will introduce coupon 4 from bond 4.

Q. Mr. McDonald, I hand you this paper and ask you what it is.
A. That is coupon No. 4 from bond 4.
Q. Are those the same bonds that you have identified here?
A. Yes, sir.
Q. Was that coupon on that bond when it was executed by the county?
A. Yes, sir.

Mr. OVERALL: I offer this coupon No. 4 from bond No. 4.

The COURT: How many are there of coupons detached, that you allege, from each of these bonds—the same number from each of the bonds?

Mr. OVERALL: No, sir; not the same number from each of the bonds.

Q. I will hand you this paper and get you to state what that is.
A. That is coupon No. 5 from bond No. 4.
144 Q. Was that coupon attached to the bond at the time of its execution by the county?
A. Yes, sir.

Mr. OVERALL: I offer that coupon in evidence.

Q. I now hand the witness another exhibit. State what that is.
A. That is coupon 6 taken from bond No. 4.

The COURT: Can't we shorten this by letting him run through them all?

Mr. OVERALL: I was going to take off of No. 4. There are 4, 5, 6, and 7; and then I will ask another question.

Mr. CUNNINGHAM: I wish to cross-examine Mr. McDonald on this matter.

Q. Was this coupon attached to bond 4 at the time of its execution by the county?
A. Yes, sir.
Mr. KRUM: What is that?
A. No. 6.
Q. I hand you this exhibit at the top of the page; state to the jury what that is.
A. Coupon No. 7 from bond No. 4.
Q. Was that attached to the bond at the time of its execution?
A. Yes, sir.

Mr. OVERALL: I have not read each one, but I will state to the court No. 4 matured December 31, 1874, and No. 5, December 31, 1875.

The COURT: They are in?

Mr. OVERALL: Yes; but I state the contents of the 6th in 1876 and 7th in 1877. These are the five coupons sued on in this suit from bond No 4. Now, we have made out a list here. We have here the exhibits that are filed in these books, and we have paged each page of these books. We have made out a list showing
145 the page upon which each particular coupon is to be found. Of course if it is required by the court we will go through and show each one of its coupons; but if the gentleman will admit the same evidence may be considered in as to each of the other coupons, why, we will furnish the page on which the coupon may be found in the book containing the exhibits.

Mr. CUNNINGHAM. I think the counsel will not pretend to say that in this book are all the coupons upon which they are still suing?

Mr. OVERALL. Yes; in these three books.

Mr. CUNNINGHAM. Oh, three books. What are the other three books? Ah! I find he offers here what he called the attention of the court to yesterday—that is, books in which judgments were rendered eight years ago and paid, and these have nothing to do with the case of Hill against Scotland County. We are talking abou these. Have never been filed in these.

The COURT. How is that?

Mr. OVERALL. The gentleman is mistaken. There never have been judgments on any coupons that we have in this suit and are asking judgment for—not one. Here is a memorandum. The clerk made it and refiled it with the coupons. Coupon No. 6 from bonds No. 10, 11, 12, and so on, running down and giving each one, and refiled in case 1153 and 1287.

Mr. CUNNINGHAM. Under the date of October 12—to-day—what business has the clerk of this court to file bonds in this case without an order of this court? I ask, what authority has he to do it?

Mr. OVERALL. I suppose a person who brings a suit has a right to file exhibits.

146 Mr. CUNNINGHAM: To file exhibits on file in another case, which were in suit eight years ago, without an order of this court?

Mr. OVERALL: These have been withdrawn by an order of this court in a former suit. At a former time they were on file in this suit, and remained on file until they were transposed in this case, when the clerk made a memorandum showing that they were transposed.

Mr. CUNNINGHAM: Will you produce an order showing that they shall be refiled in this case? I would like to see any such order of this court.

Mr. OVERALL: This bond or coupon was sued on in 1878, one of these consolidated cases. It is a consolidated case of two Hill cases, in Hill against Scotland County, now consolidated in one case, and they are those coupons. We can give the gentleman a memorandum of where each one of these coupons is to be found; for the convenience of the clerk he had them put in books, and we can give him the pages of each one of these coupons as they are to be found. The only thing is, if you want us to go through each one of the coupons we can go through each one if you wish. We have taken those from bond No. 4.

Mr. CUNNINGHAM: The court will understand — in the book which I hold in my hand are coupons legitimately appertaining to this case—coupons made the subject of litigation here, but which have been duly filed. Now, this morning, they have gotten the clerk to make a memorandum, without an order of this court, that the bonds which have been filed in the case of Mellon against Scotland County and Dodge against Scotland County and Hill against Scot-

147 land County, No. 752, are filed in this case, when we have set up by our solemn answer that for more than a year past they were merged in a judgment rendered seven years ago. We have pleaded it, and we have a right to be heard on that point, and I say

that it is not in the power of any clerk of a court to determine our rights in advance of adjudication by a jury and the court.

The COURT: Of course it cannot be supposed that the court is going to look through all these matters. Of course the rule of law requires where you bring a suit on an obligation of this character you shall file it. Now, what was filed?

Mr. OVERALL: These were filed, all of them left with the clerk.

The COURT: When?

Mr. OVERALL: Mr. Hughes can tell about that.

Mr. HUGHES. They were marked, filed on the 12th of October, 1885.

Mr. OVERALL: No; the clerk makes a simple memorandum, that is all.

Mr. CUNNINGHAM: There must be a filing mark on the coupon showing that the clerk has filed it.

The COURT: The clerk gives a memorandum of it.

Mr. OVERALL: He don't have to mark it filed.

Mr. CUNNINGHAM: The clerk must put it on the coupon because it was filed once before.

The COURT: Why was it filed once before and refiled?

Mr. OVERALL: Because the former suit was taken out and put in this suit.

The COURT: What became of that?

Mr. HUGHES: I will explain that matter. At the time of the
148 Mellon, Hill, Dodge, and other suits, formerly in this court, there were certain coupons, by agreement of counsel, not entered of record and filed in those cases. The judgment was rendered on coupons declared upon, as well as those filed by consent or agreement of counsel, and merged into a judgment.

Mr. CUNNINGHAM: Produce the written agreement.

The COURT: You mean the syndicate?

Mr. HUGHES: They were merged in a judgment and an alternative mandamus was ordered on that judgment. To the return on that alternative writ Mr. Johnson, who represented the county, pleaded that the judgments were too large; that they were for more than the declaration called for; that explained that. But it appeared at that time that the order of the court permitting us to file these or the agreement had either been lost or never entered of record at that time, it being the same term of court at which the judgment was rendered. We took leave to withdraw from the judgments the coupons filed by agreement, but not declared upon and had leave. They were then marked "cancelled," because the judgment had before that at that term of court been rendered. We had leave at that time to withdraw those coupons and dismiss them from the suit. We had the coupons and the judgment entered for the true amount, whereupon a peremptory mandamus was rendered and the taxes levied on that and none other. Now, that is the explanation. We immediately then declared upon these coupons in No. 1287. William Hill sued on them, and that was the second William Hill suit against Scotland County. At the next term after that *that* suit that 1153 was consolidated and there has never been any

question about that, and it explains the remark of counsel
149 yesterday that we got judgment for $10,000 too much before. We had the two cases, 1153 and 1287, consolidated, and now we propose to have these bonds properly identified on the records of the court and to show that we are correct in every instance. We are not expecting to have judgment for one cent that we are not entitled to. The coupons are so pasted in that they could not be torn out, and for the convenience of the counsel and the clerk we made this memorandum. Here are all these things that were declared since 1878 in this safe, and under the charge of the clerk since 1878; they are all here now.

The COURT: Let us have some proof of that.

Mr. CUNNINGHAM: I except.

The COURT: Show me the records.

Mr. HUGHES: I refer to record 8, page 256.

Mr. OVERALL: I will read the record of the court.

The COURT: What case is that in?

Mr. OVERALL: This is the record of the court, April 30th, 1878, United States to the relation of William Hill, relator, — County Court of Scotland County, respondent.

(Reads the record as follows:)

Record Entry.

"Now, at this day, this case comes on for hearing on the motion for a peremptory writ of mandamus; whereupon the relator, by his attorneys, A. J. Baker and F. G. Hughes, enters a remittitur in the sum of $1,169.25 on the judgment heretofore rendered, and asks that he be permitted to withdraw the sixth maturing coupons filed in said cause for the amount of which remittitur is prayed to be entered; whereupon it is ordered by the court that the said remittitur be entered and that the judgment stand for the aggregate amount,
to wit, $4,521.92, and that the plaintiff have leave to withdraw
150 said sixth maturing coupon, and the respondent making no further defense and it appearing to the court, etc." It then proceeds with the order of the court.

Mr. CUNNINGHAM: Now I desire to note an objection.

The COURT: It says there is another order.

Mr. OVERALL: There are three cases, or four, I believe, "United States at the relation of James B. Didge, relator, against the County Court of Scotland County, respondent." They are all the same, and the order is that he be permitted to withdraw the sixth remaining coupon filed in said cause, for the amount of which said remittitur is prayed to be entered, whereupon it is ordered by the court that said remittitur be entered as that judgment standing for the aggregate amount, to wit, $5,028.48, and that plaintiff have leave to withdraw the said sixth maturing coupon, and that the same order in the United States to the relation of Mellon and others in all these cases in suit here; the same order was made the same day, and the same order in Manning, on page 257 of the same book, and the same

order in Finley, page 257 and '8 of the same record. Those are the ones that are included in these books and are produced here.

The COURT: Some of them appertain to the Hill suits. How about the First National Bank and Mellon cases—any?

Mr. OVERALL: None at all; it is only as to the Hill suits.

Mr. CUNNINGHAM: Permit me one word; I think I certainly ought to be heard on this matter. The record of this court, and I challenge contradiction, shows that on the 25th of September, 1877, this court rendered judgments in each of the cases named, of Finley and Dodge against Scotland County, for certain amounts therein stated. The record which the gentleman has read to the court is dated April 30th, 1877, and is made in the mandamus proceedings growing out of the original suit, and I take the position, and I desire to so record my objection, that this court has no more right than I have to give him permission to withdraw those coupons. The term had passed at which the judgment was rendered; this court merged those coupons and judgment on the 25th of September, 1877; Book H, pages 29 and 30, which had not been read, shows these facts, and at a subsequent term of the court, for reasons best known to themselves, they took this course. Mr. Johnson has talked with me about that thing, and, as they have undertaken to bring in his statement, I will state that he told me they remitted those coupons to keep from going to the Supreme Court of the United States, and I think I have as much right to repeat his statement as they have, and Mr. Johnson has so stated to me. But the record is the thing we are to talk about, and the record shows that this court gave judgment on those coupons, and I take the position that when the term expired the control of this court over that matter ended, unless by a proceeding in equity to stay such judgment. You cannot set aside part of a judgment without setting aside the whole. The coupons were merged in that judgment; they were identified with it. No leave was given to take away part of the coupons therein merged. As Judge Krum suggests, and as I wish to press on the court at the outset, the remittitur doesn't change the matter at all; it simply lessens the amount they have gotten. They subsequently came in and remitted part of that judgment. Why they did it it is none of our business to
152 ask. They may have gotten judgment for too much. We do not know, but we do say that this court had no right to give them leave to withdraw the coupons merged six months before in another judgment. It was too late after the term expired, and this court takes judicial notice that the term expired on the third Monday in March, 1878, and this order was made on the 30th of April, 1878.

Mr. OVERALL: I desire to say to the court that is the 6th coupon; I have the record and ask to introduce the record in each one of these cases on each 6th maturing coupon; that it was withdrawn by order of this court; that it was never sued on in that case at all, and that is the reason this court made the order that these coupons might be withdrawn. They were filed, if you please, by mistake. There is no pretense that they were declared on in that case. No cause of action was alleged as to any of these coupons that were withdrawn by order of the court, and that is the reason the court ordered them

to be withdrawn; that was the motion in case 754. The record withdrawing the coupons is offered; that I have read to the court; case of C. H. Mellen against Scotland County. It shows that the coupons sued on in that case were numbered 3, 4, and 5, and not a sixth coupon due in 1876 was declared upon in that suit at all. The only trouble is there was some outside agreement of counsel that the court said at the time it could not take judicial notice of, and that all the plaintiff was entitled to recover on at that time was what they had declared on; that is what the judgment must be for, and the court directed them to withdraw these coupons that had been filed, if you please, by mistake. We ask leave if there is
153 any question about that, unless the gentleman objects and the court sustains it, to introduce the petition in that case.

Mr. CUNNINGHAM: The amended petition is what I want; not the petition.

Mr. OVERALL: All right, sir.

Mr. CUNNINGHAM: There is a stipulation which shows they may file an amended petition and declare only on one count. The stipulation provided that they might file an amended petition, declaring only on one coupon, and the amended petition, which was filed, shows that coupon was declared on.

The COURT: That is the one that Mr. Overall read, coupon 6th, wasn't it, in the suit?

Mr. CUNNINGHAM: Not in the suit; it never was in the suit at any time. The gentlemen cannot show any paper to show it was ever in suit. I just leave it to your own recollection.

The COURT: We will have to go by the record of course.

Mr. CUNNINGHAM: I have a certified copy, and I expected I would find many of these papers were lost, but I have a certified copy of the amended petition; they only declared on one coupon, and they didn't name the coupon in that amended petition at all.

Mr. OVERALL: That shows what we say; there never was a declaration in this case on the 6th coupon, and there is no record showing it.

Mr. CUNNINGHAM: May it please the court, I want to say one word more, and then I will be done; I don't care what is done, except to have my objection recorded. This book shows these coupons marked filed on a certain day in September, 1876, in this case, that they are marked "cancelled," a word, I think, in the English
154 language meaning that they are paid, and somebody under the authority of this court has cancelled each one of those coupons. Now they were filed yesterday in this case, and I object, and that is all I have to say.

The COURT: The point involved, I understand, is this, and if I am not properly informed counsel must correct me. In a former suit the declaration did not include the 6th coupon, but the 6th coupon had been filed. It is the rule here in this court that in all of these cases a party must file the coupons sued upon, and when judgment is obtained the clerk shall mark upon them "cancelled," because under the ordinary rules of law these coupons were merged in the judgment, and the cancellation mark is for the purpose of pre-

venting their being set afloat again as negotiable paper Now, if by mistake the party filed a coupon on which he had not declared, it was simply an error. Having received no judgment on that coupon the court permitted him to withdraw it, because it was not involved in the controversy and filed by mistake. In other words, it should not have been on the record files of this court. That is the way I understand it now. The clerk by mistake, it seems, supposing, without looking through the declarations and papers, that No. 6 was included, stamped that "cancelled," as well as all the rest, which was an error, and the court's attention being directed thereto, thereafter permitted the 6th coupon to be withdrawn, it not having been merged in the judgment, and that 6th coupon, as I understand you, is now presented to the court, it having not been refiled, so to speak, but having remained on the file under the order of the court, it is a mere technical matter of refiling it here.

155 Mr. OVERALL: It was delivered to the clerk, and he decided he could not file it because of the stamp.

Now, that there may be no mistake about it, we ask to introduce the record in each of these cases to show that these coupons were not sued on and were not merged in this judgment.

The COURT: Can't you do that, without going to the trouble of going through all this record, by showing there was a remittitur?

Mr. OVERALL: That is it exactly; there was a remittitur; it was because the gentleman claimed the judgment was too large and included something that had not been sued on the court required a remittitur.

The COURT: Did the judgment include the 6th coupon?

Mr. OVERALL: The judgment was for more than it ought to have been and that was claimed by the gentleman; it was a judgment for too large an amount, and the court required the remittitur of the judgment.

The COURT: How did that question arise?

Mr. OVERALL: It arose on application for a mandamus to enforce the judgment, and the court saw the judgment was too large a sum and required the remittitur.

The COURT: That appears there, does it?

Mr. OVERALL: Yes, sir.

Mr. CUNNINGHAM: The record don't show it; it says they voluntarily remitted it; it don't say they discovered anything at all.

The COURT: Read so much of it as appertains to this question.

Mr. CUNNINGHAM: Where is the stipulation by which you filed the amended answer? That is the thing that all this

156 rests on, and I want to have that before the court.

Mr. OVERALL: I will tell you what it was.

Mr. CUNNINGHAM: Oh, no; I want to see it; I think it is my right to have these papers; they are not here.

The COURT: What is it you want?

Mr. CUNNINGHAM: I want that stipulation.

Mr. OVERALL: The stipulation is simply that we may plead to one count instead of pleading to two.

Mr. CUNNINGHAM: I would like to have it; I think we have the right to have it.

The COURT: Have you the stipulation there?

Mr. HUGHES: Here it is. It is agreed that the plaintiff may amend the first count of his petition in each case, and that the same may be taken and considered as an amendment to all the counts in said causes, and that the defendant may answer on or before the 7th of April, and that in each case the answer to the first count may be taken as the answer to all the other counts.

Mr. CUNNINGHAM: That stipulation was not made by Mr. Johnson, but by Mr. Broadhead. That is Mr. Broadhead's stipulation.

The COURT: Who represented the county in this case?

Mr. CUNNINGHAM: Col. Broadhead and Waldo P. Johnson.

The COURT: A stipulation by one of them is as good as by all.

Mr. HUGHES: The counsel were changed meantime. This was agreed to while the original Thomas case was pending in the Supreme Court of the United States. We were bringing a number of suits, but for less than $5,000; we asked for judgment, and the court, Judge Dillon and your honor, said you would not give us judg-
157 ment on these small claims, because we couldn't appeal or take a writ of error, but you would stay these until the Thomas case was decided, and in the meantime it was suggested, probably by the court, to save costs, that counsel might file subsequent maturing coupons in the case without any suits. It seems that the clerk did not get the order. It was no stipulation made, or anything of the kind, and counsel went on and filed with that understanding. After the Thomas case was affirmed we took judgment on those cases that remained in this court pending that affirmance on judgments less than $5,000, including coupons filed, and we got an alternative writ. Meantime Col. Broadhead left the case and Judge Johnson came in, and, under the alternative writ, raised this objection, that there is no declaration here for the 6th coupon, nor any order of court nor writ to file them, and that they are here without any writ. He made that objection. We looked it up and, of course, there was nothing here. The court said it couldn't take the memory of the counsel as to what might have been done. There was nothing here to show the court had any authority to render judgment on this coupon, or anything of the kind, so that we would have to take them out or they would have to set the judgment aside. We took them out, had leave to withdraw them, and immediately brought the other suits. Nothing appeared to show the court exercised any authority over this coupon.

Mr. CUNNINGHAM: If the court wasn't willing to take the recollection of counsel seven years ago as to what happened at a previous term, I don't think it ought to take Mr. Hughes' recollection now as to something that the record does not show.

158 The COURT: The case stands, then, in this form: There was a remittitur because judgment was given for more than declared for, and for a coupon not declared or included in the amount of that judgment, leave was given to withdraw it; that is all there is of it.

Mr. CUNNINGHAM: I except to the ruling of the court.

The COURT: Of course, counsel understand in this matter that probably Brother Dillon was on the bench; there was no difference of opinion between either of the judges then on the bench, but to accommodate parties and to save costs it is possible some suggestion of the kind as stated was made, with the understanding between the parties, for their mutual benefit, but the court cannot rely on personal recollection; it has no memory except by the record, which is the established rule of law. What the record shows the court follows. As to what was understood, which was never reduced to writing, the court cannot rely upon that.

Mr. CUNNINGHAM: They have offered the whole record, I understand?

The COURT: The ordinary rule is very obvious; one man who brings a suit cannot recover for anything except on what he brings the suit, as in the case of coupons of this kind; they are maturing annually, and a man is held to the coupons on which he declares, which then are maturing. A second suit may have to follow as to coupons that matured thereafter, but if this matter was pending before the Supreme Court of the United States, for the convenience of all the parties and to avoid costs, it may have been that a suggestion of the kind spoken of was made to prevent a multiplicity of suits, costs, and expenses. However that may be, the court now has
159 nothing to do but to follow the record and what the record shows.

Mr. CUNNINGHAM: The plaintiff offered the whole record, I understand, in each of these cases?

The COURT: Of course; we will consider the record here; it is the record of this court. First, there was no declaration, as far as the Hill case was concerned, on the 6th coupon. Judgment was rendered for an excessive amount probably. It included that amount which it ought not to have included, and the attention of the court being called, when the application for the peremptory mandamus was presented, to that fact, — stated that it would set aside the original judgment unless a remittitur was made. The remittitur was made and then the proceedings to enforce the judgment went forward; but, having made a remittitur, as it seems there, to the extent of the 6th coupon, it permitted the party to withdraw that, for it did not properly enter into the judgment and could not, leaving it open for future proceedings. That is the way I understand the case.

The record in case No. 752, of William Hill against Scotland County, is in the words and figures following, to wit:

Record in Case No. 752, of William Hill vs. Scotland County.

Petition. Filed February 3rd, 1876.

In the Circuit Court of the United States for the Eastern District of the State of Missouri. —— Term, 1876.

WILLIAM HILL, Plaintiff,

vs.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

160 The plaintiff states that he is a resident and citizen of the State of Illinois, and that the defendant is a county and citizen of the State of Missouri, in the United States.

And, for his cause of action, the plaintiff states that he is the holder and owner of the second maturing coupon herewith filed, detached from bond No. eleven, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa & Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to the said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1872, and that there is now due and unpaid thereon the sum of eighty dollars with interest from maturity, for which, with his costs, plaintiff asks judgment.

161 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. eleven, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. eleven, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870,

and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. eleven, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

162 And, for a further cause of action, the plaintiff states that he is the holder and owner of the second maturing coupon herewith filed, detached from bond No. twelve, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1872, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. twelve, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouai, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. twelve, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid

on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

163 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. twelve, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 135, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 135, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon, the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

164 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 135, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and

interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 161, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 161, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

165 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 161, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 137, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 137, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

166 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 137, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 79, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 79, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

167 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon here-

with filed, detached from bond No. 79, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of a third maturing coupon herewith filed, detached from bond No. 136, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 136, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

168 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 136, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa, and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the second maturing coupon herewith filed, detached from bond No. ten, for one thousand dollars, and

being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1872, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. ten, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

169 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. ten, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. ten, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the second maturing coupon herewith filed, detached from bond No. 88, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and

delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1872, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

170 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 88, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 88, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 88, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

171 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 162, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which

the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs. plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 162, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 162, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

172 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 160, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 160, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri,

Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 160, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

173 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 38, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 38, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 38, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870,

and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

174 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 80, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 80, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 80, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

175 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 78, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and

interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 78, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 78, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

176 Wherefore plaintiff asks judgment in the sum of three thousand six hundred and eighty dollars and interest from the date of the maturity of the respective coupons.

BAKER & DRAKE AND
F. T. HUGHES,
Att'ys for Plaintiff.

Upon the filing of said petition a summons was issued in said cause, which, together with the marshal's return endorsed thereon, is in the words and figures following, to wit:

177 *Summons.*

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

The President of the United States of America to the marshal of the United States in and for said district, Greeting:

You are hereby commanded to summon the County of Scotland, in the State of Missouri, and a citizen of the State of Missouri, that *he* be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of March next, then and there to

answer the complaint of William Hill, citizen of the State of Illinois, as set forth in the petition filed in said court on the third day of February, A. D. eighteen hundred and seventy-six.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 24th day of Februarv, A. D. eighteen hundred and seventy-six.

Issued at office, in the city of St. Louis, under the seal of said circuit court the day and year last aforesaid.

[L. S.]

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

177½ [Endorsed:] No. 752. United States circuit court, eastern district of Missouri. Wm. Hill *vs.* Scotland County. Summons. Issued 24 day of Feb'y, A. D. 1876. Ret'ble 20 day of M'ch, A. D. 1876. Returned into court and filed 1st day of March, A. D. 1876. M. M. Price, clerk,

Marshal's Return.

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

I have executed the within writ by leaving a copy of the same, together with a copy of the petition thereto attached, with S. McDonald, county clerk of Scotland county, at Memphis, in said district, this 28th day of February A. D. 1876.

H. W LEFFINGWELL,
United States Marshal, Eastern District of Missouri,
By SHURLDS BARNARD, *Deputy*.

Marshal's fees:

1 service at $2.00	$2 00
Mileage, 256 miles, at 6 cents	15 36
Total	17 36

178 And afterwards, to wit, on March 22nd, 1876, there was filed the following agreement of counsel, to wit:

Agreement of Counsel.

In the causes of Du Souchet *vs.* Scotland County, Wm. Hill *vs.* Same, C. H. Mellon *vs.* Same, James B. Dodge *vs.* Same, Edwin Manning *vs.* Same, John K. Findlay *vs.* Same it is agreed that the plaintiff may amend the first count of his petition in each case, and that the same may be taken and considered as an amendment to all the counts in said causes, and that the defendant may answer on or before the 7th of April, and that in each case the answer to the first count may be taken as answer to all the other counts in said petition.

JAS. O. BROADHEAD,
Att'y for County of Scotland.
A. J. BAKER,
Att'y for Plaintiffs.

And afterwards, to wit, on April 4th, 1876, there was filed the following answer, to wit:

Answer.

In the United States Circuit Court.

WILLIAM HILL *vs.* SCOTLAND COUNTY.

Defendant, for answer to the first and all the other counts of the plaintiff's petition filed in the above-entitled cause, says that as to whether the plaintiff is the holder and owner of the coupon described and referred to in said count, or as to whether he is the owner & holder of any one of the several coupons described and referred to by plaintiff in the several counts of his petition in the above-entitled cause, it has no knowledge or information thereof sufficient to enable it to form a belief, and calls for proof thereof; and defendant denies that the said coupon or the bond from which it was detached was for one year's interest on said bond, or that the said bond or any of the bonds described in any one of the counts of plaintiff's petition or any one of the coupons set
179 forth and described in any of the counts of said petition were issued and delivered by the defendant to the "Missouri, Iowa & Nebraska Railway Company" in payment for stock which the said County of Scotland, defendant herein, in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law. Defendant denies that any such subscription of stock was ever made by said county of Scotland as averred in said count and in the several counts of said petition, and denies that said county had any authority of law to make any such subscription; and, for further answer in this behalf, defendant says that the Missouri, Iowa & Nebraska Railway Company was organized on or about the 10th of May, 1870, by virtue of certain articles of consolidation entered into at that date between the "Iowa Southern Railroad Company," a company incorporated by the laws of the State of Iowa, and the "Alexandria & Nebraska City Railroad Company," a company incorporated by the laws of Missouri, which said articles of consolidation were filed in the office of the secretary of the State of Missouri on the 11th day of May, 1870; that thereafter, and without any authority of law and without any vote of the qualified voters of Scotland county being had in reference thereto, certain persons, claiming to be the judges of the county court of said county of Scotland, did make an agreement purporting to be an agreement on behalf of the county of Scotland with the said "Missouri, Iowa & Nebraska Railway Company" to subscribe for two hundred thousand dollars of the capital stock of the said company, and did issue in the name of said county two hundred bonds, of the denomination of one thousand dollars each, with coupons thereto attached for
180 the payment of interest on said bonds, a portion of which are the same coupons sued on and referred to in the several counts of the petition in this cause; but defendant says that neither the said county of Scotland, by any of its officers or otherwise, nor did the

said persons claiming to act for said county, and who issued and delivered said bonds, ever subscribe for any of the stock of said railroad company, nor was the matter of said subscription or of said agreement to subscribe ever submitted to a vote of the qualified voters of said county of Scotland, nor was such vote ever taken, nor was the assent of two-thirds of the qualified voters of said county ever given to said subscription. Wherefore defendant asks to be hence dismissed.

JAMES O. BROADHEAD,
Att'y for Def't.

And afterwards, to wit, on April 7th, 1876, there was filed the following amended petition, to wit:

Amended Petition.

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1876.

WILLIAM HILL, Plaintiff,

against

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

The plaintiff, for amended petition, leave of court being had, states that he is a resident and citizen of the State of Illinois, and that defendant is a county and citizen of the State of Missouri, in the United States of America.

181 And, for his cause of action, plaintiff states that he is the owner and holder of the second maturing coupon herewith filed, detached from bond No. 11, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1872.

That at the maturity of said coupon defendant had made no provision for the payment of the same, and did not then nor has it ever had any means or funds at the bank of the Farmers' Loan and Trust Company, in the city and State of New York, from which said coupon would have been paid if presented for payment; that said coupon was made payable at the said bank; that there is now due on said coupon and unpaid the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

BAKER & DRAKE AND
F. T. HUGHES,
Att'ys for Pl'ff.

And afterwards, to wit, on August 9th, 1876, there was filed the following demurrer to answer, to wit:

Judgment. Demurrer to Answer.

In the Circuit Court of the United States, Eastern District of Missouri.

WILLIAM HILL, Pl'ff, *vs.* THE COUNTY OF SCOTLAND.

182 The plaintiff demurs to the defendant's answer, in so far as the said answer pleads new matter in defense, for the following grounds of objection, to wit:

That it does not state facts which constitute a defense to plaintiff's cause of action in this:

1st. That each and every allegation therein contained is irrelevant and immaterial to any issue that can properly arise in said cause.

2nd. In so far as the said answer seeks to avoid the payment of the coupons sued on upon the grounds that the proposition to make said subscription was not submitted to a vote of the qualified voters of the county is immaterial in this, that the answer discloses the fact that the Missouri, Iowa & Nebraska Railway Co. is the successor of the Alexandria & Nebraska City Railroad Co. of Missouri by consolidation with the Iowa Southern Railroad Co. of Iowa, this bringing to the notice of the court the general law of the State of Missouri, whereby said Alexandria & Nebraska City Railroad Co. was chartered, and by virtue of which said general law it was competent for said county by its county court to make said subscription without such vote.

BAKER & DRAKE AND
F. T. HUGHES,
Plaintiff's Att'ys.

And afterwards, to wit, on September 25th, 1877, the following further proceedings were had in said cause, to wit:

Judgment.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 752.

183 Now comes the plaintiff, by his attorneys, Messrs. Baker, Drake and Hughes, and the court, having examined the questions of law arising upon the demurrer to the answer heretofore filed herein, and being fully advised of and concerning the same, is of opinion that the law upon said demurrer is for the plaintiff; whereupon it is ordered that said demurrer be, and the same is hereby, sustained; and the defendant failing to further plead herein the court proceeds to ascertain the amount of damages sustained by

plaintiff by reason of the non-payment of the coupons for interest sued on, and doth assess the same at the sum of five thousand four hundred and ninety-one dollars and seventeen cents ($5,491.17).

It is, therefore, considered by the court that the plaintiff, William Hill, have and recover against the defendant, The County of Scotland, in the State of Missouri, as well the said sum of five thousand four hundred and ninety-one dollars and seventeen cents, the damages aforesaid by the court assessed, as also the costs herein expended, and have thereof execution.

The record in case No. 753 of James B. Dodge against Scotland County is in the words and figures following, to wit:

Record in Case No. 753 of J. B. Dodge vs. Scotland Co.

Petition. Filed February 3rd, 1876.

In the Circuit Court of the United States for the Eastern District of the State of Missouri. — Term, 1876.

184 JAMES B. DODGE, Plaintiff,

vs.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

The plaintiff states that he is a resident and citizen of the State of Illinois, and that the *plaintiff* is a county and citizen of the State of Missouri, in the United States.

And for his cause of action the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 71, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa & Nebraska Railway Company in payment for stock which said county of Scotland in its corporate capacity had subscribed to the said Missouri, Iowa and Nebraska Railway Company under authority of law.

That said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

185 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 39, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid

on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 71, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 71, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

186 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 45, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 45, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and

interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 45, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaitiff asks judgment.

187 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 37, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 37, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 37, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid

on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

188 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 35, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 35, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 35, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

189 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 26, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 26, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 26, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

190 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 142, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 142, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon, the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed,

detached from bond No. 142, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

191 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 140, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 140, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law: that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 140, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

192 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 138, for one thousand dollars, and being for one year's interest on said bond, which said bond was

issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 138, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 138, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

193 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 40, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 40, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of

Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 40, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

194 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 46, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 46, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of a fifth maturing coupon herewith filed, detached from bond No. 46, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa

and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

195 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 44, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa, and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 44, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 44, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

196 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 36, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of

law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 36, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 36, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

197 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 27, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 27, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870,

and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 27, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

198 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 25, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 25, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 25, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid

on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

199 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 141, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 141, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 141, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

200 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 139, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and in-

terest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 139, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 139, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

201 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 85, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 85, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 85, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

202 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 39, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 39, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

203 Wherefore plaintiff asks judgment in the sum of two thousand one hundred and sixty dollars and interest from the date of maturity of the respective coupons.

BAKER & DRAKE AND
F. T. HUGHES,
Att'ys for Plaintiff.

Upon the filing of said petition there was issued a summons in said cause, which, with the marshal's return endorsed thereon, is in the words and figures following, to wit:

204 *Summons.*

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

In the Circuit Court of the United States in and for said District.

The President of the United States of America to the marshal of the United States in and for said district, Greeting:

You are hereby commanded to summon the County of Scotland, in the State of Missouri, and citizen of the State of Missouri, that it be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of March next, then and there to answer the complaint of James B. Dodge, citizen of the State of Illinois, as set forth in the petition filed in said court on the third day of February, A. D. eighteen hundred and seventy-six.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 24th day of February, A. D. eighteen hundred and seventy-six.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk,*
By A. P. SELBY, *Deputy.*

204½ [Endorsed:] No. 753. United States circuit court, eastern district of Missouri. Jas. B. Dodge *vs.* Scotland County. Summons. Issued 24 day of Feb'y, A. D. 1876. Ret'ble 20 day of M'ch, A. D. 1876. Returned into court and filed 1st day of March, A. D. 1876. M. M. Price, clerk.

Marshal's Return.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

I have executed the within writ by leaving a copy of the same, together with a copy of the petition thereto attac ed, with S. McDonald, county clerk of Scotland county, at Memphis, in said district, this 28th day of February, A. D. 1876.

H. W. LEFFINGWELL,
United States Marshal, Eastern District of Missouri.
By SHURLDS BARNARD, *Deputy.*

Marshal's fees:

1 service at $2.00	2 00
Mileage, 256 miles at 6 cents	15 36
Total	17 36

205 And afterwards, to wit, on March 22nd, 1876, there was filed the following agreement of counsel, to wit:

Agreement of Counsel.

In the cases of Du Souchet *vs.* Scotland County, Wm. Hill *vs.* Same, C. H. Mellon *vs.* Same, James B. Dodge *vs.* Same, Edwin Manning *vs.* Same, and John K. Findley *vs.* Same it is agreed that the plaintiff may amend the first count of his petition in each case, and that the same may be taken and considered as an amendment to all the counts in said causes, and that the defendant may answer on or before the 7th of April, and that in each case the answer to the first count may be taken as answer to all the other counts in said petition.

JAS. O. BROADHEAD,
Att'y for County of Scotland.
A. J. BAKER,
Att'y for Plaintiffs.

And afterwards, to wit, on April 4th, 1876, there was filed the following answer, to wit:

Answer.

U. States Cir. Court.

JAMES B. DODGE *vs.* SCOTLAND COUNTY.

Defendant, for answer to the first and all other counts of the plaintiff's petition filed in the above-entitled cause, says that as to whether plaintiff is the holder and owner of the coupon described and referred to in said count, or as to whether he is the owner & holder of any one of the several coupons described and referred to by plaintiff in the several counts of his petition in the above-entitled cause, it has no knowledge nor information thereof sufficient to enable it to form a belief, and calls for proof thereof.

206 And defendant denies that the said coupon or the bond from which it was detached was for one year's interest on said bond, or that said bond or any of the bonds described in any one of the counts of plaintiff's petition or any one of the coupons set forth and described in any of the counts of said petition were issued and delivered by the defendant to the "Missouri, Iowa and Nebraska Railway Company" in payment for stock which the said County of Scotland, defendant herein, in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law.

Defendant denies that any such subscription of stock was ever made by said county of Scotland as averred in said count and in the several counts of said petition, and denies that said county had any authority of law to make any such subscription.

And, for further answer in this behalf, defendant says that the "Missouri, Iowa and Nebraska Railway Company" was organized

on or about the 10th of May, 1870, by virtue of certain articles of consolidation entered into at that date between the "Iowa Southern Railroad Company," a company incorporated by the laws of the State of Iowa, and the "Alexandria and Nebraska City Railroad Company," a company incorporated by the laws of Missouri, which said articles of consolidation were filed in the office of the secretary of the State of Missouri on the 11th day of May, 1870.

That thereafter, and without any authority of law and without any vote of the qualified voters of Scotland county being had in reference thereto, certain persons, claiming to be the judges of the county court of said county of Scotland, did make an agree-
207 ment purporting to be an agreement on behalf of the county of Scotland with the said "Missouri, Iowa & Nebraska Railway Company" to subscribe for two hundred thousand dollars of the capital stock of the said company, and did issue in the name of said county two hundred bonds, of the denomination of one thousand dollars each, with coupons thereto attached for the payment of interest on said bonds, a portion of which are the same coupons sued on and referred to in the several counts of the petition in this cause; but defendant says that neither the said county of Scotland, by any of its officers or otherwise, nor did the said persons claiming to act for said county, and who issued and delivered said bonds, ever subscribe for any of the stock of said railroad company, nor was the matter of said subscription or of said agreement to subscribe ever submitted to a vote by the qualified voters of said county of Scotland, nor was such vote ever taken, nor was the assent of two-thirds of the qualified voters of said county ever given to said subscription. Wherefore defendant asks to be hence dismissed.

JAS. O. BROADHEAD,
Att'y for Def'd't.

(Copy. C. M. W.)

And afterwards, to wit, on April 7th, 1876, there was filed the following amended petition, to wit:

Amended Petition.

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1876.

JAMES B. DODGE, Plaintiff,

vs.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

The plaintiff, for amended petition, leave of court being
208 had, states that he is a resident and citizen of the State of Illinois, and that defendant is a county and citizen of the State of Missouri, in the United States.

And, for his cause of action, plaintiff states that he is the owner and holder of the third maturing coupon herewith filed, detached from bond No. 71, for one thousand dollars, and being one year's

interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment of stock which the said county of Scotland, in its corporate capacity, had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law.

That said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873.

That at the maturity of said coupon defendant had made no provisions for the payment of the same, and did not then nor has it ever had any funds or means in the bank of the Farmers' Loan and Trust Company, in the city and State of New York, from which said coupon would have been paid if presented for payment; that said coupon was made payable at said bank.

That there is now due on said coupon and unpaid the sum of eighty dollars and interest from maturity, for which, with costs, plaintiff asks judgment.

BAKER & DRAKE &
F. T. HUGHES,
Att'ys for Pl'ff.

And afterwards, to wit, on August 9th, 1876, there was filed the following demurrer to answer, to wit:

Demurrer to Answer.

In the Circuit Court of the United States for Eastern District of Mo.

209 JAMES B. DODGE, Pl'ff,

vs.

THE COUNTY OF SCOTLAND, Def't.

The plaintiff demurs to the defendant's answer, in so far as said answer pleads new matter in defence of said suit, for the following grounds of objection, to wit:

That it does not state facts which constitute a defence to plaintiff's cause of action in this:

1st. That each and every allegation therein contained is irrelevant and immaterial to any issue that can properly arise in said suit.

2nd. In so far as said answer attempts to avoid the payment of the coupons sued on upon the ground that the proposition to make the subscription of stock mentioned in said petition and answer was not submitted to a vote of the qualified voters of Scotland county is immaterial in this, that the charter of the Alexandria and Nebraska City Railroad Co. is a general law and brought to the notice of this court by said answer, and by the provisions of said charter the county courts along the line of said railroad are authorized to subscribe to the capital stock thereof and issue the bonds of such county in payment therefor without such vote.

BAKER & DRAKE &
F. T. HUGHES,
Atty's for Plaintiff.

And afterwards, to wit, on September 25th, 1877, the following further proceedings were had, to wit:

Judgment.

JAMES B. DODGE, Plaintiff,
vs.
SCOTLAND COUNTY, Mo., Defendant. } 753.

210 Now comes the plaintiff, by his attorneys, Messrs. Baker, Drake and Hughes, and the court, having examined the questions of law arising upon the demurrer to the answer heretofore filed herein, and being fully advised of and concerning the same, is of opinion that the law upon said demurrer is for the plaintiff; whereupon it is ordered that said demurrer be, and the same is hereby, sustained; and defendant failing to further plead herein the court proceeds to ascertain the amount of damages due and owing by defendant by reason of the non-payment of the coupons for interest sued upon, and doth assess the same at the sum of six thousand nine hundred and ninety-one dollars and twenty cents ($6,991.20).

It is therefore considered by the court that the said plaintiff, James B. Dodge, have and recover against the defendant, The County of Scotland, in the State of Missouri, as well the said sum of six thousand nine hundred and ninety-one dollars and twenty cents, the damages aforesaid by the court assessed, as also the costs in this behalf expended, and have thereof execution.

The record in case No. 754, of C. H. Mellon against Scotland County, is in the words and figures following, to wit:

Record in Case No. 754 of C. H. Mellon against Scotland Co.

Petition. Filed February 3rd, 1876.

In the Circuit Court of the United States for the Eastern District of the State of Missouri. — Term, 1876.

211 CHARLES H. MELLEN, Plaintiff,

vs.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

The plaintiff states that he is a resident and citizen of the State of Iowa, and that the defendant is a county and citizen of the State of Missouri, in the United States.

And, for his cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. one hundred and fifty-nine (159), for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa & Nebraska Railway Company in payment for stock which said county of Scotland in its corporate capacity had subscribed to

the said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

212 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 159, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 159, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 158, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

213 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 158, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars,

dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 158, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 134, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

214 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 134, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 134, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870,

and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 133, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

215 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 133, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 133, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 89, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid

on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

216 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 89, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 89, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 84, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon, the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

217 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 84, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 84, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 106, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

218 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 106, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 106, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotand in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed,

detached from bond No. 105, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

219 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 105, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 105, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 104, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

220 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 104, for one thousand dollars, and being for one year's interest on said bond, which said bond was

issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 104, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 103, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

221 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 103, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 103, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri,

Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 102, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

222 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 102, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 102, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 101, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said

Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

223 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 101, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 101, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 77, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

224 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 77, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that

said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 77, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 76, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

225 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 76, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 76, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870,

and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

226 Wherefore plaintiff asks judgment for the sum of three thousand three hundred and sixty dollars, with interest from the date of maturity of the respective coupons.

BAKER & DRAKE AND
F. T. HUGHES,
Att'ys for Pl'ff.

Upon the filing of said petition there was issued a summons in said cause, which, with the marshal's return endorsed thereon, is in the words and figures following, to wit:

227 *Summons.*

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

The President of the United States of America to the marshal of the United States in and for said district, Greeting:

You are hereby commanded to summon the County of Scotland, in the State of Missouri, and citizen of the State of Missouri, that it be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of March next, then and there to answer the complaint of Charles H. Mellen, citizen of the State of Iowa, as set forth in the petition filed in said court on the third day of February, A. D. eighteen hundred and seventy-six.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 24 day of February, A. D. eighteen hundred and seventy-six.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[L. S.] M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy.*

227½ [Endorsed:] No. 754. United States circuit court, eastern district of Missouri. C. H. Mellen *vs.* Scotland County. Summons. Issued 24 day of Feb'y, A. D. 1876. Ret'ble 20 day of March, A. D. 1876. Returned into court and filed 1st day of March, A. D. 1876. M. M. Price, clerk.

Marshal's Return.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

I have executed the *written* writ by leaving a copy of the same, together with a copy of the petition thereto attached, with S. McDonald, county clerk of Scotland county, at Memphis, in said district, this 28th day of February, A. D. 1876.

H. W. LEFFINGWELL,
United States Marshal, Eastern District of Missouri,
By SHURLDS BARNARD, *Deputy.*

Marshal's fees:

Service, at $2.00	$2 00
Mileage, 256 miles, at 6 cents	15 36
Total	$15 36

228 And afterwards, to wit, on March 22nd, 1876, there was filed the following agreement of counsel, to wit:

Agreement of Counsel.

In the cases of Du Souchet *vs.* Scotland County, Wm. Hill *vs.* Same, C. H. Mellon *vs.* Same, James B. Dodge *vs.* Same, Edwin Manning *vs.* Same, John K. Findley *vs.* Same, it is agreed that the plaintiff may amend the first count of his petition in each case, and that the same may be taken and considered as an amendment to all the counts in said causes, and that the defendant may answer on or before the 7th of April, and that in each case the answer to the first count may be taken as answer to all the other counts in said petition.

JAS. O. BROADHEAD,
Att'y for County of Scotland.
A. J. BAKER,
Att'y for Plaintiffs.

And afterwards, to wit, on April 4th, 1876, there was filed the following answer, to wit:

Answer.

In U. S. Circuit Court.

C. H. MELLON, Plaintiff, *vs.* SCOTLAND COUNTY, Defendant.

Defendant, for answer to the first and all the other counts of the plaintiff's petition filed in the above-entitled cause, says that as to whether plaintiff is the holder and owner of the coupon described and referred to in said count, or as to whether he is the owner and holder of any one of the several coupons described and referred to

by plaintiff in the several counts of his petition in the above-entitled cause, it has no knowledge or information thereof sufficient to enable it to form a belief, and calls for proof thereof.

229 And defendant denies that the said coupon or the bond from which it was detached was for one year's interest on said bond, or that the said bond or any of the bonds described in any one of the counts of plaintiff's petition or any one of the coupons set forth and described in any of the counts of said petition were issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said County of Scotland, defendant herein, in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law.

Defendant denies that any such subscription of stock was ever made by said county of Scotland as averred in said count and in the several counts of said petition, and denies that said county had any authority of law to make any such subscription.

And, for further answer in this behalf, defendant says that the "Missouri, Iowa and Nebraska Railway Company" was organized on or about the 10th of May, 1870, by virtue of certain articles of consolidation entered into at that date between the "Iowa Southern Railroad Company," a company incorporated by the laws of the State of Iowa, and the "Alexandria and Nebraska Railway Company," a company incorporated by the laws of the State of Missouri, which said articles of consolidation were filed in the office of the secretary of the State of Missouri on the 11th day of May, 1870.

That thereafter, and without any authority of law and without any vote of the qualified voters of Scotland county being had in reference thereto, certain persons, claiming to be the judges of the county court of said county of Scotland, did make an agree-

230 ment purporting to be an agreement on behalf of the county of Scotland with the said "Missouri, Iowa and Nebraska Railway Company" to subscribe for two hundred thousand dollars of the capital stock of the said company, and did issue in the name of said county two hundred bonds, of the denomination of one thousand dollars each, with coupons thereto attached for the payment of interest on said bonds, a portion of which are the same coupons sued on and referred to in the several counts of the petition in this cause; but defendant says that neither the said county of Scotland, by any of its officers or otherwise, nor did the said persons claiming to act for said county, and who issued and delivered said bonds, ever subscribe for any of the stock of said railway company, nor was the matter of said subscription or of said agreement to subscribe ever submitted to a vote of the qualified voters of said county of Scotland, nor was such vote ever taken, nor was the assent of two-thirds of the qualified voters of said county ever given to said subscription. Wherefore defendant asks to be hence dismissed.

JAMES O. BROADHEAD,
Att'y for Defendant.

And afterwards, to wit, on April 7th, 1876, there was filed the following amended petition, to wit:

Amended Petition.

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1876.

CHARLES H. MELLON, Pl'ff,

vs.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Def't.

231 The pl'ff, for amended petition, leave of court being had, states that he is a citizen of the State of Iowa, and that the def't is a county & citizen of the State of Missouri, in the United States.

And, for his cause of action, plaintiff states that he is the owner & holder of the third maturing coupon herewith filed, detached from bond No. 159, for one thousand dollars, and being one year's interest on said bond, which said bond was issued and delivered by the def't to the Missouri, Iowa & Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa & Nebraska Railway Company under authority of law.

That said coupon is for the sum of eighty dollars, dated September 1st, 1871, and due Dec'r 31st, 1873.

That at the maturity of said coupon defendant had made no provisions for the payment of the same, and did not then nor has it ever had any means or funds at the bank of the Farmers' Loan and Trust Company, in the city & State of New York, from which said coupon could have been paid if presented for payment.

That said coupon was made payable at said bank.

That there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

BAKER & DRAKE &
F. T. HUGHES,
Att'ys for Pl'ff.

And afterwards, to wit, on August 9th, 1876, there was filed the following demurrer to answer, to wit:

232 *Demurrer to Answer.*

In the Circuit Court of the United States for the Eastern District of Mo.

C. H. MELLEM, Pl'ff, *vs.* THE COUNTY OF SCOTLAND, Def't.

The plaintiff demurs to the defendant's answer, in so far as said answer pleads new matter in defense of said suit, for the following reasons:

That said answer does not state facts which constitute a defense to plaintiff's claim, in this:

1st. That each and every allegation therein contained is irrelevent and immaterial to any issue in said cause.

2nd. In so far as said answer seeks to avoid the payment of said coupons upon the ground that the proposition to make the subscription of stock mentioned in plaintiff's said petition and in defendant's answer was not submitted to a vote of the qualified voters of Scotland county is immaterial in this, that the charter of the Alexandria and Nebraska City Railroad Co. is a general law and brought to the notice of this court by defendant's answer, and by the provisions of said charter the county courts along the line of said railroad are authorized to subscribe to the capital stock thereof and issue the bonds of such county in payment therefor without such vote.

BAKER & DRAKE AND
F. T. HUGHES,
Plaintiff's Att'ys.

And afterwards, to wit, on September 25th, 1877, the following further proceedings were had in said cause, to wit:

233 *Judgment.*

CHARLES H. MELLEN, Plaintiff,
vs.
THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant. } 754.

Now comes the plaintiff, by his attorneys, Messrs. Baker, Drake & Hughes, and the court, having examined the questions of law arising upon the demurrer to the answer heretofore filed herein, and being fully advised of and concerning the same, is of opinion that the law upon said demurrer is for the plaintiff; whereupon it is ordered that said demurrer be, and the same is hereby, sustained; and the defendant failing to further plead herein the court proceeds to ascertain the amount of damages due and owing by the defendant by reason of the non-payment of the coupons for interest sued upon, and doth assess the same at the sum of five thousand one hundred and six dollars ($5,106.00).

It is therefore considered by the court that the plaintiff, Charles H. Mellen, have and recover against the defendant, The County of Scotland, in the State of Missouri, as well the said sum of five thousand one hundred and six dollars, damages so as aforesaid by the court assessed, as also the costs herein expended, and have thereof execution.

The record in case No. 755, of Edwin Manning against The County of Scotland, is in the words and figures following, to wit:

Record in Case No 755, of Edwin Manning vs. Scotland Co.

234 Petition. Filed February 3rd, 1876.

In the Circuit Court of the United States for the Eastern District of Missouri. —— Term, 1876.

EDWIN MANNING, Plaintiff,

vs.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

The plaintiff states that he is *the* resident and citizen of the State of Iowa, and the defendant is a county and citizen of the State of Missouri, in the United States.

And, for a cause of action, theplaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 50, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa & Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to the said Missouri, Iowa & Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

235 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 186, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 186, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870,

and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 185, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

236 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 185, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 185, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 186, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and

unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

237 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 107, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 108, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 108, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

238 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 108, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 96, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 96, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

239 And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 107, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 107, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa & Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to the said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 95, for one thousand dollars, and being for

one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

240 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 95, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 95, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 96, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

241 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 52, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and

Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 51, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 51, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

242 And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 51, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 50, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Rail-

way Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fifth maturing coupon herewith filed, detached from bond No. 50, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1875, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

242½ And, for a further cause of action, the plaintiff states that he is the holder and owner of the third maturing coupon herewith filed, detached from bond No. 52, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

And, for a further cause of action, the plaintiff states that he is the holder and owner of the fourth maturing coupon herewith filed, detached from bond No. 52, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1874, and that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which, with his costs, plaintiff asks judgment.

243 Wherefore plaintiff asks judgment for the sum of two thousand one hundred and sixty dollars and interest from the date of the maturity of the respective coupons.

BAKER, DRAKE AND
F. T. HUGHES,
Attorneys for Plaintiff.

Upon the filing of said petition there was issued a summons, which, together with the marshal's return endorsed thereon, is in the words and figures following, to wit:

244 *Summons.*

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

The President of the United States of America to the marshal of the United States in and for said district, Greeting:

You are hereby commanded to summon the County of Scotland, in the State of Missouri, citizen of the State of Missouri, that it be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of March next, then and there to answer the complaint of Edwin Manning, citizen of the State of Iowa, as set forth in the petition filed in said court on the third day of February, A. D. eighteen hundred and seventy-six.

Hereof fail not and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 24 day of February, A. D. eighteen hundred and seventy-six.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[L. S.] M. M. PRICE, *Clerk,*
By A. P. SELBY, *Deputy.*

244½ [Endorsed:] No. 755. United States circuit court, eastern district of Missouri. Edwin Manning *vs.* Scotland County. Summons. Issued 24 day of Feb'y, A. D. 1876. Ret'ble 20 day of March, A. D. 1876. Returned into court and filed 1st day of March, A. D. 1876. M. M. Price, clerk.

Marshal's Return.

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

I have executed the within writ by leaving a copy of the same, together with a copy of the petition thereto attached, with S. McDonald, county clerk of Scotland county, at Memphis, in said district, this 28th day of February, A. D. 1876.

H. W. LEFFINGWELL,
United States Marshal Eastern District of Missouri,
By SHURLDS BARNARD, *Deputy.*

Marshal's fees:	
1 service at $2.00	$2 00
Mileage, 256 miles at 6 cents	15 36
Total	17 36

245 And afterwards, to wit, on March 22nd, 1876, there was filed the following agreement, to wit:

Agreement of Counsel.

In the cases of Du Souchet *vs.* Scotland County, Wm. Hill *vs.* Same, C. H. Mellon *vs.* Same, James B. Dodge *vs.* Same, Edwin Manning *vs.* Same, John K. Findley *vs.* Same, it is agreed that the plaintiff may amend the first count of his petition in each case, and that the same may be taken and considered as an amendment to all the counts in said causes, and that the defendant may answer on or before the 7th of April, and that in each case the answer to the first count may be taken as answer to all the other counts in said petition.

JAS. O. BROADHEAD,
Att'y for County of Scotland.
A. J. BAKER,
Attorney for Plaintiffs.

And afterwards, to wit, on April 4th, 1876, there was filed the following answer, to wit:

Answer.

In the United States Circuit Court.

EDWIN MANNING, Pl'ff, *vs.* SCOTLAND COUNTY, Def't.

Defendant, for answer to the first and all the other counts of the plaintiff's petition filed in the above-entitled cause, says that as to whether plaintiff is the holder and owner of the coupon described and referred to in said count, or as to whether he is the owner and holder of any one of the several coupons described and referred to by plaintiff in the several counts of his petition in the above-entitled cause, it has no knowledge or information thereof sufficient to enable it to form a belief, and calls for proof thereof.

246 And defendant denies that the said coupon or the bond from which it was detached was for one year's interest on said bond or that the said bond or any of the bonds described in any one of the counts of plaintiff's petition or any of the coupons set forth and described in any of the counts of said petition were issued and delivered by the defendant to the "Missouri, Iowa & Nebraska Railway Company" in payment for stock which the said County of Scotland, defendant herein, in its corporate ca-

pacity had subscribed to said Missouri, Iowa and Nebraska Railway Company under authority of law.

Defendant denies that any such subscription of stock was ever made by said county of Scotland as averred in said count and in the several counts of said petition, and denies that said county had any authority of law to make any such subscription.

And, for further answer in this behalf, defendant says that the "Missouri, Iowa and Nebraska Railway Co." was organized on or about the 10th of May, 1870, by virtue of certain articles of consolidation entered into at that date between the "Iowa Southern Railroad Company," a company incorporated by the laws of the State of Iowa, and the "Alexandria and Nebraska City Railroad Company," a company incorporated by the laws of Missouri, which said articles of consolidation were filed in the office of the secretary of the State of Missouri on the 11th day of May, 1870.

That thereafter, and without any authority of law and without any vote of the qualified voters of Scotland county being had in reference thereto, certain persons, claiming to be the judges of the county court of said county of Scotland, did make an agreement, purporting to be an agreement on behalf of the county of Scotland,
247 with the said "Missouri, Iowa and Nebraska Railway Company" to subscribe for two hundred thousand dollars of the capital stock of the said company, and did issue in the name of said county two hundred bonds, of the denomination of one thousand dollars each, with coupons thereto attached for the payment of interest on said bonds, a portion of which are the same coupons sued on and referred to in the several counts of the petition in this cause; but defendant says that neither the said county of Scotland, by any of its officers or otherwise, nor did the said persons claiming to act for said county, and who issued and delivered said bonds, ever subscribe for any of the stock of said railroad company, nor was the matter of said subscription or of said agreement to subscribe ever submitted to a vote of the qualified voters of said county of Scotland, nor was such vote ever taken, nor was the assent of two-thirds of the qualified voters of said county ever given to said subscription.

Wherefore defendant asks to be hence dismissed.

JAS. O. BROADHEAD,
Att'y for Def't.

And afterwards, to wit, on April 7th, 1876, plaintiff, by leave of court, filed the following amended petition, to wit:

Amended Petition.

In the United States Circuit Court for the Eastern Dist. of Missouri.
March Term, 1876.

EDWIN MANNING, Plaintiff,

vs.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.

The plaintiff, for amended petition, leave of court being had, states that he is a resident and citizen of the State of Iowa, and that

248 defendant is a county and citizen of the State of Missouri, in the United States.

And, for cause of action, plaintiff states that he is the holder and owner of the 3rd maturing coupon herewith filed, detached from bond No. 50, for one thousand dollars, and being for one year's interest on said bond, which said bond was issued and delivered by the defendant to the Missouri, Iowa and Nebraska Railway Company in payment for stock which the said county of Scotland in its corporate capacity had subscribed to the said Missouri, Iowa and Nebraska Railway Company under authority of law; that said coupon is for the sum of eighty dollars, dated September 1st, 1870, and due December 31st, 1873.

That at the maturity of said coupon defendant had made no provision for the payment of the same, and did — then nor has it ever had any means or funds at the bank of the Farmers' Loan and Trust Company, in the city and State of New York, from which said coupon would have been paid if presented for payment; that said coupon was made payable at the said bank; that there is now due and unpaid on said coupon the sum of eighty dollars and interest from maturity, for which with his costs, plaintiff asks judgment.

BAKER & DRAKE &
F. T. HUGHES,
Att'ys for Pl'ff.

And afterwards, to wit, on August 9th, 1876, there was filed the following demurrer to answer, to wit:

Demurrer to Answer.

In the Circuit Court of the United States, Eastern Dist. of Mo.

EDWARD MANNING, Pl'ff,

vs.

THE COUNTY OF SCOTLAND, Def't.

249 The plaintiff demurs to the defendant's answer in so far as the said answer pleads new matter in defense, for the following grounds of objection, to wit:

That it does not state facts which constitute a defense to plaintiff's cause of action in this:

1st. That each and every allegation therein contained is irrelevant and immaterial to any issue that can properly arise in said cause.

2nd. In so far as the said answer seeks to avoid the payment of the coupons sued on upon the ground that the proposition to make said subscription was not submitted to a vote of the qualified voters of the county is immaterial in this, that the answer discloses the fact that the Missouri, Iowa and Nebraska Railroad Co. is the successor to the Alexandria & Nebraska City Railroad Co. of Missouri by consolidation with the Iowa Southern Railway Co. of Iowa; thus bringing to the notice of the court *that* the general law of the State of Missouri whereby said Alexandria and Nebraska City Railroad Co. was

chartered, and by virtue of which said general law it was competent for said county, by its county court, to make said subscription without a vote.

BAKER & DRAKE &
F. T. HUGHES,
Plaintiff's Att'ys.

And afterwards, to wit, on September 25th, 1877, the following further proceedings were had in said cause, to wit:

Judgment.

EDWIN MANNING, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 755.

Now comes the plaintiff, by his attorneys, Messrs: Baker, Drake and Hughes, and the court, having examined the questions
250 of law arising upon the demurrer to the answer heretofore filed herein, and being fully advised of and concerning the same, is of opinion that the law upon said demurrer is for the plaintiff; whereupon it is ordered that said demurrer be, and the same is hereby, sustained; and the defendant failing to further plead herein the court proceeds to ascertain the amount of damages due and owing by defendant by reason of the non-payment of the coupons for interest sued upon, and doth assess the same at the sum of three thousand two hundred and eighty-three dollars and twenty cents ($3,283.20).

It is therefore considered by the court that the plaintiff, Edwin Manning, have and recover against the defendant, The County of Scotland, in the State of Missouri, as well the said sum of three thousand two hundred and eighty-three dollars and twenty cents, the damages aforesaid by the court assessed, as also the costs herein expended, and have thereof execution.

The list of coupons filed in the foregoing cases, to wit, 752, 753, 754, & 755, is in the words and figures following, to wit:

251 *List of Coupons Filed in Cases Nos.* 752, 753, 754, & 755.

No. 752.—William Hill *vs.* Scotland County:
Coupon No. 2 detached from bonds 10, 12, 88, 11.
Coupon No. 3 detached from bonds 10, 12, 80, 88, 38, 11, 160, 162, 137, 135, 79, 161, 78, 136.
Coupon No. 4 detached from bonds 10, 12, 80, 88, 136, 78, 79, 161, 135, 137, 162, 160, 11, 38.
Coupon No. 5 detached from bonds 137, 135, 161, 79, 78, 136, 162, 160, 11, 38, 88, 80, 12, 10.
Coupon No. 6 detached from bonds 12, 11, 38, 79, 78, 80, 88, 136, 135, 137, 10, 162, 161, 160.

No. 753.—James B. Dodge *vs.* Scotland County:
Coupon No. 3 detached from bonds 71, 46, 45, 44, 37, 36, 35, 27, 26, 25, 142, 141, 140, 139, 138, 39, 40, 85.

Coupon No. 4 detached from bonds 71, 46, 45, 44, 37, 36, 35, 27, 26, 25, 142, 141, 140, 139, 138, 39, 40, 85.

252 Coupon No. 5 detached from bonds 71, 46, 45, 44, 37, 36, 141, 140, 139, 138, 39, 40, 85, 26, 25, 35, 27, 142.

Coupon No. 6 detached from bonds 179, 26, 25, 35, 27, 37, 36, 42, 39, 40, 140, 46, 45, 44, 71, 56, 57, 139, 141, 138, 85, 178; 93.

No. 754.—Mellen *vs.* Scotland County:

Coupon No. 3 detached from bonds 84, 89, 133, 159, 158, 134, 102, 101, 77, 106, 104, 76, 105, 103.

Coupon No. 4 detached from bonds 133, 84, 134, 89, 159, 158, 102, 101, 77, 106, 104, 76, 105, 103.

Coupon No. 5 detached from bonds 133, 84, 134, 89, 159, 158, 102, 101, 77, 106, 104, 76, 105, 103.

Coupon No. 6 detached from bonds 105, 104, 103, 102, 101, 106, 159, 134, 158, 89, 133, 77, 84, 76.

No. 755.—Edwin Manning *vs.* Scotland County:

Coupon No. 3 detached from bonds 50, 186, 108, 107, 95, 96, 52, 51, 185.

Coupon No. 4 detached from bonds 50, 186, 108, 107, 96, 52, 95, 51, 185.

Coupon No. 5 detached from bonds 52, 50, 186, 108, 107, 96, 95, 51, 185.

Coupon No. 6 detached from bonds 108, 107, 95, 96, 50, 186, 51, 52, 185.

253 Mr. CUNNINGHAM: Yes; but that is not what the record shows.

Mr. OVERALL: Now, the proposition I suggested was that we should consider the same testimony as to each of the coupons sued on now remaining in suit as has been given in regard to the coupon from bond 4 in order to facilitate the trial.

The COURT: One moment, so that the jury may understand it as well as the court. You include in the Hill suit this 6th coupon about which we have been talking under the circumstances stated. Mr. Cunningham objects to it. The court has overruled his objections, stating its reasons therefor. Does that finish these coupons?

Mr. OVERALL: That finishes all the coupons in the Hill case, but not in the First National Bank and Mellen cases.

The COURT: You have all the coupons on the one bond, except the 6th, which now the court says you may offer?

Mr. OVERALL: Yes.

The COURT: That includes all the coupons on the particular bond which you name? Now, you suggest, and I suppose Mr. Cunningham assents, that the same testimony may be considered as applying to the coupons of every other bond?

List of Coupons Remaining Undismissed in Cases Nos. 1153 *and* 1287

Coupons Nos. 3 and 4 from bond No. 1.
Coupons 3, 4, 5, & 6 from bond No. 2.
Coupons 3, 4, 5, & 6 from bond No. 3.

Coupon Nos. 4 from bond No. 86.
Coupons 3, 4, 5, & 6 from bond No. 145.
Coupons 3, 4, 5, & 6 from bond No. 146.
254 Coupons 3, 4, 5, & 6 from bond No. 147.
Coupons 6 & 7 from bond No. 25.
Coupons 6 & 7 from bond No. 26.
Coupons Nos. 6 & 7 from bond No. 27.
Coupons 6 & 7 from bond No. 158.
Coupons 6 & 7 from bond No. 159.
Coupons Nos. 6 & 7 from bond No. 160.
Coupons 6 & 7 from bond No. 161.
Coupons 6 & 7 from bond No. 162.
Coupons 6 & 7 from bond No. 89.
Coupons 3, 4, 5, & 6 from bond No. 13.
Coupons 3, 4, 5, & 6 from bond No. 14.
Coupons 3, 4, 5, & 6 from bond No. 15.
Coupons 3, 4, 5, & 6 from bond No. 100.
Coupons 3, 4, 5, & 6 from bond No. 196.
Coupons 3, 4, 5, & 6 from bond No. 197.
Coupons 3, 4, 5, & 6 from bond No. 198.
Coupons Nos. 3, 4, 5, & 6 from bond No. 199.
Coupons 3, 4, 5, & 6 from bond No. 200.
Coupons 3, 4, 5, 6, & 7 from bond No. 4.
Coupons 3, 4, 5, 6, & 7 from bond No. 5.
Coupons 3, 4, 5, 6, & 7 from bond No. 6.
Coupons 6 & 7 from bond No. 10.
Coupons 6 & 7 from bond No. 11.
Coupons 6 & 7 from bond No. 12.
Coupons 3, 4, 5, 6, & 7 from bond No. 16.
Coupons 3, 4, 5, 6, & 7 from bond No. 17.
Coupons 3, 4, 5, 6, & 7 from bond No. 18.
255 Coupons 3, 4, 5, 6, & 7 from bond No. 29.
Coupons 3, 4, 5, 6, & 7 from bond No. 30.
Coupons 3, 4, 5, 6, & 7 from bond No. 31.
Coupon No. 7 from bond No. 56.
Coupons 6 & 7 from bond No. 57.
Coupons 3, 5, 6, & 7 from bond No. 63.
Coupons 3, 5, 6, & 7 from bond No. 64.
Coupons 3, 5, 6, & 7 from bond No. 65.
Coupons 3, 5, 6, & 7 from bond No. 66.
Coupons 3, 5, 6, & 7 from bond No. 67.
Coupons 3, 5, 6, & 7 from bond No. 68.
Coupons 3, 5, 6, & 7 from bond No. 69.
Coupons 3, 5, 6, & 7 from bond No. 70.
Coupons 3, 5, 6, & 7 from bond No. 81.
Coupons 3, 5, 6, & 7 from bond No. 82.
Coupons 6 & 7 from bond No. 85.
Coupons 6 & 7 from bond No. 88.
Coupons 3, 4, 5, 6, & 7 from bond No. 90.
Coupons 3, 4, 5, 6, & 7 from bond No. 92.
Coupons 6 & 7 from bond No. 93.

Coupons 3, 5, 6, & 7 from bond No. 97.
Coupons Nos. 3, 5, 6, & 7 from bond No. 98.
Coupons 6 & 7 from bond No. 138.
Coupons 6 & 7 from bond No. 139.
Coupons 6 & 7 from bond No. 140.
Coupons 6 & 7 from bond No. 141.
Coupons 6 & 7 from bond No. 142.
Coupons 3, 4, 5, 6, & 7 from bond No. 163.
Coupons 3, 4, 5, 6, & 7 from bond No. 164.
Coupons 3, 4, 5, 6, & 7 from bond No. 165.
256 Coupons 3, 4, 5, 6, & 7 from bond No. 166.
Coupons 3, 4, 5, 6, & 7 from bond No. 167.
Coupons 3, 4, 5, 6, & 7 from bond No. 173.
Coupons 3, 4, 5, 6, & 7 from bond No. 174.
Coupons 3, 4, 5, 6, & 7 from bond No. 175.
Coupons 3, 4, 5, 6, & 7 from bond No. 176.
Coupons 3, 4, 5, 6, & 7 from bond No. 177.
Coupon No. 7 from bond No. 178.
Coupons 6 & 7 from bond No. 179.
Coupons 3, 5, 6, & 7 from bond No. 187.
Coupons 3, 5, 6, & 7 from bond No. 188.
Coupons 3, 5, 6, & 7 from bond No. 189.
Coupons 3, 5, 6, & 7 from bond No. 190.
Coupons 3, 5, 6, & 7 from bond No. 75.
Coupons 3, 4, 5, & 6 from bond No. 7.
Coupons 3, 4, 5, & 6 from bond No. 8.
Coupons 3, 4, 5, & 6 from bond No. 9.
Coupons 3, 4, 5, & 6 from bond No. 99.
Coupons 3, 4, 5, & 6 from bond No. 191.
Coupons 3, 4, 5, & 6 from bond No. 192.
Coupons 3, 4, 5, & 6 from bond No. 193.
Coupons 3, 4, 5, & 6 from bond No. 194.
Coupons 3, 4, 5, & 6 from bond No. 195.
Coupons 6 & 7 from bond No. 35.
Coupons 6 & 7 from bond No. 36.
Coupons 6 & 7 from bond No. 37.
Coupons 6 & 7 from bond No. 84.
Coupons 6 & 7 from bond No. 133.
Coupons 6 & 7 from bond No. 134.
Coupons 6 & 7 from bond No. 135.
257 Coupons 6 & 7 from bond No. 136.
Coupons 6 & 7 from bond No. 137.
Coupons 6 & 7 from bond No. 101.
Coupons 6 & 7 from bond No. 102.
Coupons 6 & 7 from bond No. 103.
Coupons 6 & 7 from bond No. 104.
Coupons 6 & 7 from bond No. 105.
Coupons 6 & 7 from bond No. 106.

Transferred by Memorandum to this Case on October 12, 1885.

Coupons 4 & 13 from bond No. 16.
Coupons 4 & 13 from bond No. 17.
Coupons 4 & 13 from bond No. 18.
Coupons 4 & 13 from bond No. 63.
Coupons 4 & 13 from bond No. 64.
Coupons 4 & 13 from bond No. 65.
Coupons 4 & 13 from bond No. 66.
Coupons 4 & 13 from bond No. 100.
Coupons 4 & 13 from bond No. 199.
Coupons 4 & 13 from bond No. 200.
Coupon No. 4 from bond No. 67.
Coupon No. 4 from bond No. 68.
Coupon No. 4 from bond No. 69.
Coupon No. 4 from bond No. 70.
Coupon No. 4 from bond No. 75.
Coupon No. 4 from bond No. 81.
Coupon No. 4 from bond No. 82.
Coupon No. 4 from bond No. 97.
258 Coupon No. 4 from bond No. 98.
Coupon No. 4 from bond No. 187.
Coupon No. 4 from bond No. 188.
Coupon No. 4 from bond No. 189.
Coupon No. 4 from bond No. 190.

259 Mr. CUNNINGHAM: Yes; under the same objections.

The COURT: Under the same objections.

Mr. CUNNINGHAM: With the reservation, in the first place, that the record shows that all the coupons offered, all the 6th maturing coupons offered, have the filing marks in these previous cases, and are already marked "cancelled" and were only filed in this case on the 12th of October, 1885; those are the objections. Now, as to the next point: I have no objection to saying whatever they have proven by McDonald as to one coupon he will swear to the same thing as to the other, in regard to any coupon attached to any bond which they have offered, but I am under the impression they still have sued on coupons for which they have not produced the bonds; they have failed to produce the bonds thus far that they have named as having been formerly attached to the coupons, and if they wish to examine Mr. McDonald I desire in each instance that they shall produce the bond first. There are still other counts that they have not proven bonds for. Your honor understands they dismissed at different times $20,000 coupons yesterday and probably $5,000 since. I can figure out the amount and there are still quite a number of coupons for which they have produced no bonds.

The COURT: They will have to produce them.

Mr. OVERALL: I desire to correct the gentleman that it is not of the 6th coupon in this suit; it is only certain coupons that were withdrawn from this other suit.

The COURT: And the others are independent?

260 Mr. OVERALL: The others are independent. In this book it is only certain ones of them; these are the 6's withdrawn from the suit.

The COURT: How many are there of those?

Mr. OVERALL: We have the numbers, and as to those eight bonds I wish to say we have not produced them and don't propose to, because the county has taken them up. The defendant has those bonds, and as we will prove the coupons from those bonds—the county has taken up those eight bonds—but independent of that we will prove the coupons up.

The COURT: That pertains only to a certain class?

Mr. OVERALL: To eight bonds.

The COURT: Let us get through with one thing at a time. It is a matter of computation, and no one can carry in his mind all these things. Now you have—how many of these coupons are what you may call the refiled coupons?

Mr. OVERALL: Mr. Hagerman will show.

The COURT: I understand Mr. Cunningham's objection pertains to those primarily.

Mr. OVERALL: Mr. Hagerman has made a calculation of those and will read to the court the numbers.

The COURT: State them.

The numbers were then read as follows by Mr. Hagerman: 10, 11, 12, 25, 26, 27, 35, 36, 37, 57, 84, 85, 88, 89, 93, 101, 102, 103, 104, 105, 106, 133, 134, 135, 136, 137, 138, 139, 140, 142, 158, 159, 160, 161, 162, 179. That is all that were refiled.

Mr. CUNNINGHAM: Those are the ones marked "cancelled" and refiled.

The COURT: What are you reading from?

261 Mr. OVERHALL: From the number of the bond from which the 6's were taken up to the refiling.

The COURT: And are all the coupons on all those bonds in suit in this case?

Mr. OVERALL: That we read and are here.

The COURT: Then it is understood, of course?

Mr. OVERALL: Then there are more 6's sued on, but these are the ones filed in this suit originally and not refiled.

Mr. HAGERMAN, of counsel for plaintiff: Just 17 6's that were refiled.

Mr. CUNNINGHAM: You have read the court more than 17.

Mr. HAGERMAN, of counsel for plaintiff: These are all that purport to be filed, cancelled, and refiled in this case?

Mr. OVERALL: And withdrawn by order of the court.

Mr. CUNNINGHAM: The record don't show that.

Mr. OVERALL. The record does show that.

Mr. CUNNINGHAM: Seven years ago.

Mr. OVERALL: Now, the same testimony may be considered in as to the coupons sued on, except as to the bonds redeemed that we have not got.

Mr. CUNNINGHAM: We make the objection, and we deny that they redeemed those bonds.

The COURT: That he will have to prove.

Mr. OVERALL: We will introduce that hereafter.

The COURT: I do not take this as proof, but merely explanatory of the steps you have taken.

Mr. OVERALL: Yes; we have taken depositions to prove these coupons.

Mr. OVERALL (to the juror): Now, bonds 1, 2, 3, 56, 86, 145, 146, and 147—those are the only ones you have unmarked?

262 The JUROR: Those are the numbers of bonds not called.

Mr. OVERALL: Now, the balance, I understand, the gentleman admits; the witness will testify to the same facts as to the other bonds.

Mr. CUNNINGHAM: Subject to the same objection we have made as to the bonds or coupons?

The COURT: Certainly.

Mr. OVERALL: Now, we are through with the witness for the present, except it may be necessary to reintroduce him in regard to the bonds that we have not got after we read the depositions.

The COURT: Will you cross-examine now?

Mr. CUNNINGHAM: Yes, sir.

Cross-examination by Mr. CUNNINGHAM:

Q. Mr. McDonald, you have stated that you signed the bonds proffered to you by Mr. Overall in this case. When did you sign them and where?

A. In the court-house at Memphis; perhaps in July, 1871.

Q. Was the county court in session at the time you signed them?

A. No, sir.

Q. Who was present when you signed those bonds?

A. Captain Dawson.

Q. And yourself?

A. Yes, sir.

Q. You signed them in the clerk's office at the court-house?

A. In the room adjoining the clerk's office.

Q. Where did you get these bonds?

A. My recollection is they came to me from Warsaw, Illinois.

263 Q. Who sent them to you?

A. I think Mr. Hill.

Q. Which Hill?

A. Mr. Henry Hill. I am not sure as to that.

Q. The gentleman sitting here? Is Mr. Hill in court—Mr. Henry Hill—this gentleman the one you referred to? I understand there is more than one Henry Hill. Is this the gentleman that signed them?

A. Yes, sir; I am not positive about that. They may have come through the bank.

Q. What bank?

A. The First National Bank of Warsaw.

Q. That is the bank of which Mr. Henry Hill is president, is it not?

A. I presume so. I have no information on that point.

Q. You don't know. Well, you received them how long before you signed them?

A. My memory is not good on that.

Q. Give your best recollection, please.

A. I would say two weeks.

Q. Two weeks before you signed them?

A. Yes, sir.

Q. That will take you, then, up to the middle of June, 1871, or the first of July, 1871—somewhere about that time?

A. I think it was that time of year when they were signed.

Q. It was, at any rate, some nine or ten months or 11 months after the date of the order of the court which was introduced yesterday by Mr. Overall, was it not?

A. Yes, sir; the order of the court was dated 1870, and some time in the summer of 1871 the bonds were executed.

Q. You had no authority for signing that bond, except on the order of the court which was read yesterday, had you?

A. No, sir.

Q. That order was the one under which you undertook to execute that bond?

A. Yes, sir.

264 Q. And no other?

A. No other.

Q. Now, Mr. McDonald, do you know who wrote that order of the court? I believe you were clerk at the time the order was entered, were you not?

A. Yes, sir; I was clerk.

Mr. OVERALL: We object as wholly immaterial who wrote it. The question is whether it is the order of the court.

Mr. CUNNINGHAM: I think it is of some importance. We have pleaded they had notice of it.

The COURT: It may go to the question of notice. Let him answer.

Mr. CUNNINGHAM: I wish to bring some notice of that.

Q. Who wrote that order?

A. I wrote it on the minute book.

Q. Who gave you the draft on which you made the minutes?

A. I am not certain as to that. There was a good many hands had something to do with it.

Q. Give your best recollection about this.

A. My best recollection now is that the original draft of the order was in the handwriting of Gen. Drake.

Q. F. M. Drake?

A. F. M. Drake.

The COURT: Who is he?

A. He was president of the construction company.

Mr. HUGHES: President of the railroad company, you mean.

Q. Did you pay for having those bonds printed?

Objected to. The order provides that the county shall not pay, but that they shall be paid for by the railroad company, and they can't contradict that.

The COURT: Did you pay him?
A. No, sir; I did not.

Mr. CUNNINGHAM: The order provides that the county attorney shall have them printed. Now, if they did not print them
265 and deliver them to Mr. Hill, I wish to know who did.

The COURT: Let us get at this matter. There is a great deal of it that may be of no importance which I shall have to show to the jury, but I would rather have it heard. The last ruling of the supreme court in this case opened the door very wide.

Mr. OVERALL: I object to it because I have read a duly certified order of the county court of Scotland county that required the railroad company to which the subscription was made and the bonds to be issued to pay for the printing of those bonds.

The COURT: Suppose it did or did not?

Mr. OVERALL: It don't make any difference. He can't contradict the record and show it was not done. That record shows it ought to have been done.

Mr. CUNNINGHAM: You admit you had notice of that record; that is all I ask; you admit you knew of it?

The COURT: Oh, no. To expedite the matter let Mr. McDonald show who paid for the printing of those bonds. Do you know?

A. I do not, sir.

Q. Did the county pay for them, or you?

A. The county did not; it simply said in the order of subscription the construction company was to pay.

Mr. CUNNINGHAM: The county did not pay for the printing of those bonds that came to him from Warsaw, Illinois, and were then sent to Henry Hill.

Q. Mr. McDonald, you have testified that those coupons shown you were detached from the bonds referred to?

A. Yes, sir.

266 Q. I will ask you why you are positive upon that point; what is your reason for that?

A. In all the statements I made in reference to that it was to the best of my knowledge.

Q. I would ask you whether that coupon was detached from a bond or not. (Shows coupon to the witness.)

Mr. OVERALL: Before you answer let us see it.

WITNESS: I didn't see all of it. (Examined the coupon the second time.)

The WITNESS: Will you permit me to say in one of these coupons I am not satisfied as to the heading of them?

Mr. OVERALL: You mean you want to see one of the original ones?

WITNESS: In order to make a comparison with one thing.

Mr. OVERALL: Here is one. There is no doubt about this.

A. (After examination.) Yes; I will say that is one of the coupons.

Q. Now, what would you predicate your opinion upon? Give your reasons why you swear that was cut from the bond.

A. That is my recollection about it; that it has that lithograph signature there.

The COURT: What is it you show him?

Mr. CUNNINGHAM: What purports to be coupon No. 4 from bond 53.

Mr. OVERALL: The witness says, in his opinion, that is a coupon from that bond—that number.

Q. Now, I will ask you whether you predicate it simply on the resemblance to the other coupons or whether you have any stronger or better reasons?

A. No better reason than that.

267 Q. You have no better reason of determining either of these coupons were cut from the bond, except that they resemble the coupons that were attached to that bond?

A. Yes, sir.

Q. That is all you know?

A. Yes, sir.

Q. Let me ask, suppose some lithographer had gone and made a *fac-simile?*

Mr. OVERALL: I object.

Mr. CUNNINGHAM: I have a right to give a hypothetical case.

Mr. OVERALL: Let him not to answer until I get through; I make the objection.

Q. Suppose some lithographer had made a copy of the coupons that were printed—lithographed and attached to that bond—could you have told the difference between that copy and the ones that were attached, shown you yesterday?

The COURT: How is it?

A. I am not certain that I could.

The COURT: You are not?

A. I am not certain that I could.

Mr. CUNNINGHAM, of counsel for defendant:

Q. In other words, you determine it simply by looking at the coupon and its resemblance to those there attached?

A. Yes, sir.

Q. You have no knowledge otherwise?

A. No, sir.

Q. Be kind enough to put your initials on the back of that coupon so that if we want to identify it hereafter we can do so. (Witness complies with the request.)

Mr. CUNNINGHAM: I believe that is all I care to ask the witness.

Mr. OVERALL: That is all for the present; we want him to
268 identify the coupons of the other bonds that we will introduce.

Mr. CUNNINGHAM: Which other bonds?

Mr. OVERALL: The ones in the other two cases—Mellen and First National Bank.

The COURT: Let us finish the Hill case, and then he can come forward and identify the others, so as to keep them separate.

Mr. CUNNINGHAM: I think when we reach the other cases I can show the court reasons for reconsidering the order consolidating them, and I would like to be heard as to that when we come to it.

The COURT: Certainly; but we will get through with the one case first.

Mr. OVERALL: I desire now to read the deposition of Benj. E. Smith, of Columbus, Ohio. (The deposition was then read.)

Said deposition of Benj. E. Smith is in the words and figures following, to wit:

Benj. E. Smith.

In the United States Circuit Court for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff, } Consolidated Cause,
vs. } Nos. 1153 and 1287.
SCOTLAND COUNTY, Defendant. }

Interrogatories to Benjamin E. Smith, of Columbus, Ohio, on behalf of plaintiff, to be used in this and other causes, as per stipulation.

1st. What is your name, age, and residence?

269 2nd. Did you, during the years 1871, 1872, and 1873, occupy any official position in the Iowa Railroad Contracting Company; and, if so, what position?

3rd. During the years 1871, 1872, and 1873 did said company purchase any bonds issued by Scotland county, Missouri, to the Missouri, Iowa and Nebraska Railway Company and of the denomination of one thousand dollars each? If your answer to this interrogatory is yes, then state how many bonds said contracting company bought, and at what price.

4th. If your answer to third interrogatory is that said contracting company did, during said period, purchase such bonds, state what it did with them, and, if it sold them, to whom they were sold, at what price, where the purchasers resided, and what was done with the proceeds of such sale.

5th. At the time of purchasing said bonds, if you say that same were purchased by said contracting company, had you ever heard that Levi J. Wagner and other tax-payers of Scotland county had brought suit in the circuit court of Scotland county or elsewhere against the justices of the county court of Scotland county, the treasurer of said county, the Missouri, Iowa and Nebraska Railroad Com-

pany, and Charles Mety, or either of them, the object and purpose of which was to enjoin Mety from delivering the bonds to the railroad company, and to have them declared void and cancelled for want of authority in the county to subscribe to the stock of said railroad company or for any other purpose?

6th. At the time of purchasing said bonds, if you say they
270 were purchased, did you know or have any reason to know or suspect that said bonds or any of them were illegally or fraudulently issued?

7th. State any other fact within your knowledge beneficial either to plaintiff or defendant.

BAKER AND HUGHES AND
JOHN H. OVERALL,
Att'ys for Pl'ff.

A true copy.
Attest:

A. P. SELBY, *Clerk*,
By T. L. CRAWFORD, *D. C.*

Cross-Interrogatories.

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff, *vs.* THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.	Nos. 1153 and 1287. Consolidated.

Cross-interrogatories to be administered to Benjamin E. Smith, of the city of Columbus, county of Franklin, State of Ohio, a witness to be produced, sworn, and examined under and by the virtue of the annexed commission, before B. H. Brooks, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and The County of Scotland, in the State of Missouri, is defendant, on the part of said defendant.

Cross-interrogatory 1. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit,
271 viz., bonds, each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1, 1870, countersigned and delivered September 20 and December 11, 1871, payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars; if so, designate the numbers and amount of such bonds or coupons you may have owned or held; state when, where, from whom, and for what consideration you received same and whether or not you still own same and what induced you to become a holder thereof.

Cross-interrogatory 2. If, having owned either of the aforesaid bonds or coupons, you ever sold same, state where, when, how, to whom, and for what consideration you sold same, the number of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction, and who was present at such sale, if any was made.

Cross-interrogatory 3. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if so, state the nature of your interest, whether you have employed counsel or authorized the employment of counsel therein, or are to receive any benefit therefrom; if so, what benefit.

Cross-interrogatory 4. State whether or not you know the plaintiff or have ever made any arrangement with him or his agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

272 Cross-interrogatory 5. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit or concerning the bonds or coupons therein described or sued on? If so, file copies thereof. If lost, state how, when, and where the loss occurred, and state contents of lost paper.

Cross-interrogatory 6. If you now own or hold or ever did own or hold either of the bonds or coupons described in the second interrogatory state whether or not, when you became the owner or holder thereof, you had been informed of or had inspected any record of the county court of Scotland county, in the State of Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time you received said information and the name of the person who informed you, and all you know about said orders, their dates and contents.

Cross-interrogatory 7. State whether or not, at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory, you knew that either of said bonds had been issued or delivered by certain persons, purporting to act as president or presiding justice and clerk of the county court of Scotland county, to aid in the construction of any railroad or to pay for stock in any company organized under the general corporation law or general railroad law of the State of Missouri, adopted in Revised

273 Statutes of Missouri of 1865; if so, designate the name of such corporation and state all the facts connected therewith of which you then had knowledge.

Cross-interrogatory No. 8. If you hold or ever held either of the bonds or coupons described in the second interrogatory, state whether or not at the time you became holder of said bonds or coupons or of either of same you had in any manner been informed of the fact that any suit was pending concerning same or any application for injunction had been made, or that a restraining order by the circuit court of Scotland county had been granted restraining Charles Mety from delivering said bonds to the Missouri, Iowa and Nebraska Railway Company, its officers or agents, or to any other person or corpo-

ration, or that any order of any State court had been made concerning same; if so, state when, where, how, and from whom you received such information and the nature of such information, answering each of said subdivisions of the question.

Cross-interrogatory No. 9. State whether or not you ever heard or in any manner knew of the pendency of a certain suit instituted by Levi J. Wagner and others against the Missouri, Iowa and Nebraska Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and thence carried by change of venue to the circuit court of Shelby county, Mo., in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company should be delivered up and cancelled; if so, state how, when, and where you learned of the institution or pendency of said suit.

274 Cross-interrogatory 10. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Du Sonchet, Thomas B. Hill, George S. Knox, Emily Knox, James B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin S. Smith, James Fitzhenry, F. T. Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Tobey & Co., or any other individual or corporate body who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company had at any time actual notice of the pendency of a certain suit instituted by Levi J. Wagner and others against Charles Mety, the Missouri, Iowa and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining were null and void and should be delivered up for cancellation and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons; all the circumstances known to you affecting each of them, with actual notice of the pendency of said suit; the number of any bond or coupon which he took or received with such actual notice; the name of the individual or corporate
275 body from whom same was received; the consideration, if any, given therefor; the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory.

Cross-interrogatory No. 11. State whether or not you were ever advised or informed that said Missouri, Iowa and Nebraska Railway Company or the Iowa Railway Contracting Company or any indi-

vidual or corporation executed any indemnifying bond or bonds to Charles Mety in order to secure the delivery of said bonds or coupons described in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where, and from whom you received said information, and also whether you joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

Cross-interrogatory No. 12. State whether or not you were ever advised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction either of the tax-payers of said county or of the resident voters of said county or of two-thirds of the qualified voters of said county to any subscription of stock to the Missouri, Iowa and Nebraska Railway Company or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

Cross-interrogatory 13. State whether or not, before becom-
276 ing the holder of either or all of said bonds or coupons in the second interrogatory described, you consulted or conversed with any person concerning the said bonds or coupons; if so, state all the facts connected with such conversation.

Cross-interrogatory 14. State whether or not at any time you have ever, directly or indirectly, offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged subscription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory or any litigation arising out of said transaction; if so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covenous transaction occurred.

Cross-interrogatory No. 15. State whether or not you ever have been or now are connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railway Company or a corporation or association styled Iowa Railroad Contracting Company; if so, detail the date, duration, and nature of such connection or association.

Cross-interrogatory 16. State whether or not the aforesaid Missouri, Iowa and Nebraska Railway Company or the Iowa Rail-
road or Railway Contracting Company ever held or now hold
277 any interest in the bonds or coupons involved in this suit and described in the second interrogatory; if so, state the numbers of said bonds or coupons, the manner in which they were acquired, and when, how, and in what manner and upon what conditions,

and for what, if any, consideration they left the control of said companies or corporations, or either of same, and to whom they were delivered.

Cross-interrogatory 17. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit; if so, describe accurately the nature of such interest, and if such interest is described in writing file herewith a copy of such writing, or if such writing be lost, describe the circumstances attending such loss, and detail contents of such writing.

Cross-interrogatory 18. State whether or not you know of any permanent route adopted by the railroad company designated as the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route. If you have any written or printed matter relating to the adoption of such route file same as an exhibit herein; if not under your control, describe contents of such matter.

Cross-interrogatory 19. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and if you have under your control any written or printed evidence of such consolidation produce same and file it as an exhibit herein.

278 HENRY A. CUNNINGHAM,
Att'y for Defendant, Scotland County, Missouri.

A true copy.
Attest:
A. P. SELBY, *Clerk*,
By T. L. CRAWFORD, *D. C.*

279 *Commission.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

The President of the United States of America to Benjamin H. Brooks, notary public, Columbus, Ohio, Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you, to be examined as witnesses in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County, Missouri, defendant, all and every such person and at such time and place as shall be named to you for that purpose by the said —— ——, attorney or agent; and we command you to examine all and every such person upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examina-

tion was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination; and you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 31st day of July, A. D. eighteen hundred and eighty-five. Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court,
By T. L. CRAWFORD, *Deputy.*

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern district of Missouri. Wm. Hill *vs.* Scotland Co. Commission to Benj. H. Brooks, Columbus, Ohio, to take depositions on the part of the plaintiff in the above-entitled case. Returned and filed the — day of ——, 188–. —— ——, clerk.

280 Deposition of a witness produced, sworn, and examined on the 3rd and 5th days of August, in the year of our Lord 1885, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of said days, at the residence of Benjamin E. Smith, at the southeast corner of Broad and Fourth streets, in the city of Columbus, county of Franklin, State of Ohio, by virtue of a commission, issuing from the circuit court of the United States in and for the eastern district of Missouri, to Benjamin H. Brooks, notary public, Franklin county, Ohio, directed for the examination of witnesses in a certain cause depending in said court, wherein William Hill is plaintiff and Scotland County is defendant.

Answers to Interrogatories.

BENJAMIN E. SMITH, of the city of Columbus, Ohio, of lawful age, being duly sworn as hereinafter certified and examined on behalf of the plaintiff, according to interrogatories hereto annexed, deposeth as follows:

1. To the first interrogatory on the part of the plaintiff he answers as follows:

1 Answer. My name is Benjamin E. Smith; my age is 60 years, and I reside at Columbus, Ohio.

2. To the second interrogatory on the part of the plaintiff he answers as follows:

2 Ans. I was president of that company.

3. To the third interrogatory on the part of the plaintiff he answers as follows:

3 Ans. Yes; $200,000 of bonds; we paid par for them.

4. To the fourth interrogatory on the part of the plaintiff he answers as follows:

4 Ans. We sold them, but I don't remember to whom, at
281 about 80 cents; I don't know where the purchasers resided; the proceeds belonged to us. We took the bonds. We sold the bonds and got the proceeds.

5. To the fifth interrogatory on the part of the plaintiff he answers as follows:

5th Ans. I never heard of any such suit.

6. To the sixth interrogatory on the part of the plaintiff he answers as follows:

6th Ans. No, sir; they were not fraudulently issued and I had no reason to think so.

7. To the seventh interrogatory on the part of the plaintiff he answers as follows:

7th Ans. The fact is the bonds were issued to us and we sold them. I know of no facts further than I have stated.

Answers to Cross-Examination.

Cross-examination:

Said witness, having the cross-interrogatories hereto annexed on the part of defendant submitted to him, deposeth as follows:

1. To the first cross-interrogatory he answers as follows:

1st X Ans. I individually didn't own any at all; the contracting company owned $200,000 of them. I do not remember the numbers of them; we received them when they were issued; we received them from Scotland county at their par value; we sold them; we received them on a contract.

2. To the second cross-interrogatory he answers as follows:

2 X Ans. I don't remember to whom we sold them; we sold them in different lots at different times; we sold them at about 80 cents.
I cannot remember the numbers of them. I presume they've
282 got that. I sold the bonds, and there wasn't any one present but me and the buyers; there wasn't anything particular said that I remember.

3. To third cross-interrogatory he answers as follows:

3d X Ans. I am not a party in interest. I have neither employed counsel or authorized the employment of counsel in this suit and I am not to receive any benefit from this suit.

4. To the fourth cross-interrogatory he answers as follows:

4th X Ans. I know Mr. Hill, but I haven't seen the man for ten years, except once a few weeks ago. I haven't made any arrangement with him for prosecuting this action or with any of his agents.

5. To the fifth cross-interrogatory he answers as follows:

5th X Ans. I have signed no contracts or papers and have written no letters concerning the suit. I have no papers or copies of papers

relating to the suit and have never written or received any letters, bonds, papers, or contracts concerning those bonds or this suit.

Not being able to complete the taking of said deposition, by reason of the feeble health of the witness, Mr. B. E. Smith, I adjourn the further taking of the same till to-morrow, Tuesday, August 4th, 1885, then to be continued at the same place and between the same hours mentioned in the above caption.

BENJAMIN H. BROOKS,
Notary Public.

TUESDAY, *August 4th*, 1885.

Not being able to complete the taking of said deposition, by reason of the continued feeble health of said witness, I adjourn the further taking of the same till to-morrow, the 5th day of August, 1885,
283 then to be continued at the same place and between the same hours mentioned in the above caption.

BENJAMIN H. BROOKS,
Notary Public.

Pursuant to adjournment, as above stated, on the 5th day of August, 1885, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, at the residence of Mr. B. E. Smith, I continued the taking of said deposition, as follows, namely:

BENJAMIN E. SMITH, in continuation of his deposition commenced on the 3d day of August, 1885, on his oath further says:

6. To the sixth cross-interrogatory he answers as follows:

6th X Ans. Neither I nor the company now own any of the bonds; we sold them all. We never saw or heard of any record in Scotland county court touching those bonds either before or after we got them; nobody ever told me about any such thing.

7. To the seventh cross-interrogatory he answers as follows:

7th X Ans. I knew that these bonds had been issued to aid in the construction of the road, and the construction company took them. The name of the railroad company was the Missouri, Iowa and Nebraska Railroad Company.

8. To the eighth cross-interrogatory he answers as follows:

8th X Ans. When we held those bonds we had no knowledge or information whatever of any such suit or application for injunction, and we had no knowledge or information of any order from a State court concerning the bonds.

9. To the ninth cross-interrogatory he answers as follows:

9th X Ans. I never heard of any such suit until Mr. Hill told me of it about three weeks ago.

10. To the tenth cross-interrogatory he answers at follows:

284 10th X Ans. I never heard of any such suit until Mr. William Hill told me of it about three weeks ago, and I know of no fact tending to show that any of those men knew about any such suit. I think Mr. William Hill got some of those bonds, but whether

he has them now or not I don't know, and I don't know whether he knew of any such suit. I never heard that those bonds had ever been ordered to be delivered up or cancelled.

11. To the eleventh cross-interrogatory he answers as follows:

11th X Ans. I never heard of any such indemnifying bond to Charles Mety, and I don't recollect of ever joining in the execution of any such bond of indemnity.

12. To the twelfth cross-interrogatory he answers as follows:

12th X Ans. I never knew anything about any such thing. I didn't know anything about it and was never advised whether there was an election of tax-payers concerning the bonds or not. All I know was that we took the bonds of them and then sold them.

13. To the thirteenth cross-interrogatory he answers as follows:

13th X Ans. I don't remember of any conversation or consultation concerning those bonds.

14. To the fourteenth cross-interrogatory he answers as follows:

14th X Ans. No; I never knew of any such transaction.

15. To the fifteenth cross-interrogatory he answers as follows:

15th X Ans. I was in no way, and never have been, connected with or interested in the Missouri, Iowa and Nebraska Railway Co.

285 I was president of the Iowa Railway Contracting Company along in the years 1871, 1872, and 1873. I was president three or four years. Our work was completed and turned over to the M., I. and N. R'y Company.

16. To the sixteenth cross-interrogatory he answers as follows:

16th X Ans. The railway contracting company received the bonds directly from the railroad company; then we sold them. I don't know who owns them now, and I don't remember the numbers of them; we took them on the contract for building the road; we took them at par and sold them at 80 cents, or about that; I don't remember to whom they were delivered.

17. To the seventeenth cross-interrogatory he answers as follows:

17th X Ans. No; I don't know whether the railway company is interested in the suit or not. The contracting company has no interest in it, either, that I know of. I don't know of any writing connected with the suit or detailing any interest in it.

18. To the eighteenth cross-interrogatory he answer as follows:

18th X Ans. I never heard of any such railroad company.

19. To the nineteenth cross-interrogatory he answers as follows:

19th X Ans. I don't know of any such consolidation and never heard of the road before.

B. E. SMITH.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

BENJAMIN H. BROOKS,
Notary Public in and for Franklin County, Ohio.

286 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION, } ss:
Franklin County, }

I, Benjamin H. Brooks, notary public in and for the county of Franklin, State of Ohio, do hereby certify that in pursuance of the annexed commission came before me, at the residence of B. E. Smith, on the southeast corner of Broad and Fourth streets, in the city of Columbus, in the county and State last aforesaid, Benjamin E. Smith, who was by me duly sworn to testify the truth, the whole truth, and nothing but the truth of his knowledge touching the matter in controversy in a cause now pending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County is defendant; that he was by me examined upon the interrogatories and cross-interrogatories hereto annexed, and his examination reduced to writing by me and subscribed and sworn to by him in my presence on the days, between the hours, and at the place in that behalf aforesaid, and his said deposition is now herewith returned.

And I further certify that said Benjamin E. Smith is a resident of the county of Franklin, in said State of Ohio, and that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

Given at Columbus, in the county of Franklin and State of Ohio, this 5th day of August, A. D. 1885.

[SEAL.] BENJAMIN H. BROOKS,
Notary Public in and for Franklin County,
State of Ohio, Commissioner.

Commissioner's fee, $8.00.

287 Endorsed: "United States circuit court, eastern district of Missouri. William Hill, plaintiff, *vs.* Scotland County, defendant. Nos. 1153 & 1287. Deposition taken on behalf of plaintiff. Filed Aug. 7, 1885. Opened by request of pl'ff. A. P. Selby, clerk."

Mr. OVERALL: I wish now to read the deposition of Andros P. Stone for the purpose of covering the seven bonds that have not been produced here.

Mr. CUNNINGHAM: The stipulation on file in this case provides that the testimony may be taken upon interrogatories before any officer authorized to take the deposition, and that we may make on the trial of the case any objection that we desire as to the competency or relevancy of the testimony. I think, in the first place, this certificate shows that it was not taken before an officer authorized to take depositions.

Mr. OVERALL: I desire to read the commission.

The COURT: The objection is overruled; even if it be correct it is too late to take notice, after a jury has been impanelled and sworn.

(The deposition was then read.)

The deposition of Andros P. Stone is in the words and figures following, to wit:

288 *Andrus B. Stone.*

Interrogatories to be administered to each of the following persons, Andrus B. Stone and William H. Gebhard, both of the city of New York, State of New York, witnesses to be produced, sworn, and examined under and by virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named, in a certain cause pending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said plaintiff.

1st. What is your name, age, and residence?

2nd. Were you ever the owner of any bonds dated September 1st, 1870, issued by Scotland county, Missouri, to the Missouri, Iowa and Nebraska Railway Company and of the denomination of one thousand dollars each?

289 3rd. If in answer to the second interrogatory you say you were the owner of such bonds, then state further when you became such owner; what were the numbers of such bonds owned by you; whether said bonds had attached to them all unmatured coupons; what you paid for said bonds; whether you have disposed of said bonds and coupons; and, if disposed of, state to whom, where the purchaser resides, and what you received for them. If any coupons have been sued on, state circumstances placing them in suit, the numbers of such coupons, and numbers of bonds from which detached.

4th. At the time of purchasing said bonds, if you say you did purchase some of them, did you know or had you ever heard that Levi J. Wagner and other tax-payers of Scotland county had brought suit in the circuit court of Scotland county or elsewhere against the justices of the county court of Scotland county, the treasurer of said county, the Missouri, Iowa and Nebraska Railway Company, and Charles Mety or either of them, the object and purposes of which was to enjoin Mety from delivering the bonds to the railroad company and to have them declared void and cancelled for want of authority in the county to subscribe to the stock of said railroad company or for any other purpose?

5th. At the time of purchasing said bonds, if you say you did purchase some of them, did you know or have you reason to know that said bonds or any of them were illegally or fraudulently issued?

BAKER & HUGHES AND
JOHN H. OVERALL,
Att'ys for Pl'ff.

A copy.
Attest: A. P. SELBY, *Clerk.*

290 *Cross-Interrogatories.*

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff,
vs.
THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.
} Nos. 1153 and 2871. Consolidated.

Cross-interrogatories to be administered to Andrus B. Stone & Wm. H. Gebhard, of the city of New York, county of ——, State of New York, *a* witness- to be produced, sworn, and examined under and by the virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said defendant.

Cross-interrogatory No. 1. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit, viz., bonds each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1, 1870, countersigned and delivered September 20 and December 11, 1871, payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars. If so, designate the numbers and amount of such bonds
291 or coupons you may have owned or held. State when, where, from whom, and for what consideration you received same, and whether or not you still own same, and what induced you to become a holder thereof.

Cross-interrogatory 2. If, having owned either of the aforesaid bonds or coupons, you ever sold same, state where, when, how, to whom, and for what consideration you sold same, the numbers of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction, and who was present at such sale, if any was made.

Cross-interrogatory 3. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if so, state the nature of your interest, whether you have employed counsel or authorized the employment of counsel therein, or are to receive any benefit therefrom; if so, what benefit.

Cross-interrogatory 4. State whether or not you know the plaintiff or have ever made any arrangement with him or his agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

Cross-interrogatory 5. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit or concerning the bonds or coupons therein described or sued on? If so, file copies thereof. If lost, state how, when, and where the loss occurred, and state contents of lost paper.

292 Cross-interrogatory 6. If you now own or hold or ever did own or hold either of the bonds or coupons described in the second interrogatory, state whether or not, when you became the owner or holder thereof, you had been informed of or had inspected any record of the county court of Scotland county, in the State of Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company, or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time you received said information and the name of the person who informed you, and all you know about said orders, their dates and contents.

Cross-interrogatory 7. State whether or not, at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory, you knew that either of said bonds had been issued or delivered by certain persons, purporting to act as president or presiding justice and clerk of the county court of Scotland county, to aid in the construction of any railroad or to pay for stock in any company organized under the general corporation law or general railroad law of the State of Missouri, adopted in Revised Statutes of Missouri of 1865; if so, designate the name of such corporation and state all the facts connected therewith of which you then had knowledge.

Cross-interrogatory 8. If you hold or ever held either of the bonds or coupons described in the second interrogatory, state whether or not at the time you became holder of said bonds or coupons or of either of same you had in any manner been informed of the

293 fact that any suit was then pending concerning same or any application for injunction had been made, or that a restraining order by the circuit court of Scotland county had been granted restraining Charles Mety from delivering said bonds to the Missouri, Iowa and Nebraska Railway Company, its officers or agents, or to any other person or corporation, or that any order of any State court had been made concerning same; if so, state when, where, how, and from whom you received such information and the nature of such information, answering each of said subdivisions of the question.

Cross-interrogatory 9. State whether or not you ever heard or in any manner knew of the pendency of a certain suit instituted by Levi J. Wagner and others against the Missouri, Iowa and Nebraska Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and thence carried by change of venue to the circuit court of Shelby county, Mo., in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska

Railway Company should be delivered up and cancelled; if so, state how, when, and where you learned of the institution or pendency of said suit.

Cross-interrogatory 10. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Do Sonchet, Thomas B. Hill, George S. Knox, Emily Knox, James B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin S. Smith, James Fitzhenry, F. T.
294 Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A. Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Tobey & Co., or any other individual or corporate body who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company had at any time actual notice of the pendency of a certain suit instituted by Levi J. Wagner and others against Charles Mety, the Missouri, Iowa and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining were null and void and should be delivered up for cancellation and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons; all the circumstances known to you affecting each of them, with actual notice of the pendency of said suit; the number of any bond or coupon which he took or received with such actual notice; the name of the individual or corporate body from whom same was received; the consideration, if any, given therefor; the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory.

Cross-interrogatory 11. State whether or not you were ever advised or informed that said Missouri, Iowa and Nebraska
295 Railway Company or the Iowa Railway Contracting Company or any individual or corporation executed any indemnifying bond or bonds to Charles Mety in order to secure the delivery of said bonds or coupons described in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where, and from whom you received said information, and also whether you joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

Cross-interrogatory 12. State whether or not you were ever advised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction either of the tax-payers of said county or of the resident voters of said county or of two-thirds of the qualified voters

of said county to any subscription of stock to the Missouri, Iowa and Nebraska Railway Company or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

Cross-interrogatory 13. State whether or not, before becoming the holder of either or all of said bonds or coupons in the second interrogatory described, you consulted or conversed with any person concerning the said bonds or coupons; if so, state all the facts connected with such conversation.

Cross-interrogatory 14. State whether or not at any time you
296 have ever, directly or indirectly, offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged subscription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory or any litigation arising out of said transaction; if so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covenous transaction occurred.

Cross-interrogatory 15. State whether or not you ever have been or are now connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railway Company or a corporation or association styled Iowa Railroad Contracting Company; if so, detail the date, duration, and nature of such connection or association.

Cross-interrogatory 16. State whether or not the aforesaid Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company ever held or now hold any interest in the bonds or coupons involved in this suit and described in the second interrogatory; if so, state the numbers of said bonds or coupons, the manner in which they were acquired, and when,
297 how, and in what manner and upon what conditions and for what, if any, consideration they left the control of said companies or corporations, or either of same, and to whom they were delivered.

Cross-interrogatory 17. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit; if so, describe accurately the nature of such interest, and if such interest is described in writing file herewith a copy of such writing, or if such writing be lost describe the circumstances attending such loss, and detail contents of such writing.

Cross-interrogatory 18. State whether or not you know of any permanent route adopted by the railroad company designated as the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route. If you have any written or

printed matter relating to the adoption of such route file same as an exhibit herein; if not under your control, describe contents of such matter.

Cross-interrogatory 19. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and if you have under your control any written or printed evidence of such consolidation produce same and file it as an exhibit herein.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

A copy.
Attest: A. P. SELBY, *Clerk.*

298 *Commission.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

The President of the United States of America to Edwin F. Corey, of New York city, N. Y., Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you, to be examined as witnesses in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County is defendant, all and every such person named in the interrogatories hereto attached and at such time and place as shall be named by you for that purpose; and we command you to examine all and every such person upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination; and you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 8th day of September, A. D. eighteen hundred and eighty-five.

Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Commission to Edwin F. Corey, No. 54 Wall St., New York city, to take depositions on the part of the plaintiff in the above-entitled case. Returned and filed the — day of ——, 188–. —— ——, clerk.

299 The deposition of Andrus B. Stone, a witness produced, sworn and examined on the twenty-third day of September, A. D. 1885, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the office of Edwin F. Corey, No. 54 Wall street, in the city, county, and State of New York, pursuant to the annexed commission and interrogatories and cross-interrogatories thereto annexed, before me, Edwin F. Corey, the commissioner in said commission named, in a certain cause now depending in the circuit court of the United States for the eastern district of Missouri, between William Hill, plaintiff, and Scotland County, defendant, on the part of the plaintiff.

The said ANDRUS B. STONE, of lawful age, being by me duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and being examined upon the interrogatories and cross-interrogatories to him propounded and hereto annexed, did depose and say:

Answers to Interrogatories.

In answer to interrogatory 1st: Andrus B. Stone; I am 61 years of age, and reside in the city of New York.

In answer to interrogatory 2d: Yes.

In answer to interrogatory 3d: I became the owner about the year 1871; don't remember any nearer the time. The bonds were numbered 1, 2, 3, 86, 145, 146, and 147; all unmatured coupons were attached to them when I bought them; I paid about fifty cents on a dollar for them; I have sold all of the bonds; I don't
300 know who bought them, as I sent them to A. L. Griffin, Keokuk, Iowa, and he sold them for me; I do not remember the price I received for them. I sent coupons 3, 4, and 5 off of each of said bonds to the 1st National Bank of Warsaw, Illinois, for collection, but do not know that a suit was ever brought on them.

In answer to interrogatory 4th: No.

In answer to interrogatory 5th: No.

Answers to Cross-Interrogatories.

In answer to cross-interrogatory 1st: Yes; I did own seven of those bonds—Nos. 1, 2, 3, 86, 145, 146, and 147, amounting to seven

thousand dollars; I bought (E. F. C.) seven from the Iowa Contracting Co.; I bought them about the year 1871, at fifty cents on a dollar; I do not now own any of said bonds; I bought them for the purpose of making a profit on them.

In answer to cross-interrogatory 2d: About the year 1880 I sent the bonds to A. L. Griffin, Keokuk, Iowa, who sold them for me—the same bonds before described; I don't know where he sold them, how, or to whom; neither do I remember what I received for them; I do not know of anything being said concerning said sale, or who was present at the time.

In answer to cross-interrogatory 3d: No; I am not.

In answer to cross-interrogatory 4th: I do know the plaintiff, but never made any arrangement with either him or his agents.

In answer to cross-interrogatory 5th: No.

301 In answer to cross-interrogatory 6th: Never was so informed or inspected any record.

In answer to cross-interrogatory 7th: I did not know.

In answer to cross-interrogatory 8th: I never received any such information.

In answer to cross-interrogatory 9th: I never heard of such a suit.

In answer to cross-interrogatory 10th: I do not know of any such fact.

In answer to cross-interrogatory 11th: I never was so advised or informed.

In answer to cross-interrogatory 12th: I never was so advised or informed.

In answer to cross-interrogatory 13th: Never consulted with anybody that I now remember.

In answer to cross-interrogatory 14th: No; decidedly, no.

In answer to cross-interrogatory 15th: I never had any connection with the railroad Co. I was a stockholder in the contracting company between the years 1870 and 1871.

In answer to cross-interrogatory 16th: I believe the bonds were delivered by Scotland county to the railroad company and by them delivered to the contracting company for work performed by the contracting company for the railroad company on contract, and by the contracting company sold to different persons. I don't know the numbers of the bonds, nor the dates when these transactions transpired.

302 In answer to cross-interrogatory 17th: No; I can't see how they can be.

In answer to cross-interrogatory 18th: No; I do not.

In answer to cross-interrogatory 19th: No; I do not.

ANDROS B. STONE.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

EDWIN F. COREY,
Commissioner.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, } ss:

I, Edwin F. Corey, the commissioner named in the annexed commission issued out of the clerk's office of the circuit court of the United States for the eastern district of Missouri, do hereby certify that, in pursuance of said commission and the interrogatories and cross-interrogatories thereto annexed, came before me, at my office, 54 Wall street, in the city, county, and State of New York, Andros B. Stone, who was by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in controversy aforesaid and in answer to the several interrogatories and cross-interrogatories propounded to him; that he was examined upon said interrogatories and cross-interrogatories, and his deposition reduced to writing by me and subscribed and sworn to by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

303 I further certify that said Andros B. Stone is a resident of the city, county, and State of New York.

Given at said city, county, and State of New York this 23rd day of September, A. D. 1885.

EDWIN F. COREY, [SEAL.]
Commissioner.

Plaintiff then read in evidence the depositions of Andrew L. Griffin, Alfred P. Hough, Oscar Townsend, William H. Gebhart.

The deposition of A. L. Griffin is in the words and figures following, to wit:

A. L. Griffin.

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Pl'ff,
vs.
SCOTLAND COUNTY, Def't. } Nos. 1153 & 1287.

Interrogatories.

Interrogatories to be administered to Addison L. Griffin, of the city of Pittsburgh, State of Pennsylvania, a witness to be produced, sworn, and examined, under and by virtue of the annexed commission, before William F. Robb, the commissioner therein named, in a certain cause pending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said plaintiff.

304 1st. What is your name, age, residence, and occupation?

2nd. Did you ever receive from Andrus B. Stone any bonds and coupons dated September 1st, 1870, issued by Scotland county, Missouri, to the Missouri, Iowa and Nebraska Railroad Company?

If so, state what bonds and coupons you received from him, when you received them, the numbers thereof, so as to identify them; for what purpose you received them, and what you did with them. Answer as fully as you can.

BAKER & HUGHES AND
JOHN H. OVERALL.

A copy.
Attest: A. P. SELBY, *Clerk.*

Cross-Interrogatories.

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff,
vs.
THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.
} Nos. 1153 and 1287. Consolidated.

Cross-interrogatories to be administered to A. L. Griffin, of the city of Pittsburg, county of ——, State of Pennsylvania, a witness to be produced, sworn, and examined, under and by virtue of the annexed commission, before William F. Robb, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the Countyof Scotland, in the State of Missouri, is defendant, on the part of said defendant.

305 Cross-interrogatory No. 1. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit, viz., bonds, each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1, 1870, countersigned and delivered September 20 and December 11, 1871, payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars; if so, designate the numbers and amount of such bonds or coupons you may have owned or held; state when, where, from whom, and for what consideration you received same and whether or not you still own same and what induced you to become a holder thereof.

Cross-interrogatory 2. If, having owned either of the aforesaid bonds or coupons, you ever sold same, state where, when, how, to whom, and for what consideration you sold same, the numbers of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction, and who was present at such sale, if any was made.

Cross-interrogatory 3. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if

so, state the nature of your interest, whether you have employed counsel or authorized the employment of counsel therein, or are to receive any benefit therefrom; if so, what benefit.

Cross-interrogatory 4. State whether or not you know the plaintiff or have ever made any arrangement with him or his
306 agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

Cross-interrogatory 5. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit or concerning the bonds therein described or sued on? If so, file copies thereof; if lost, state how, when, and where the loss occurred, and state contents of lost paper.

Cross-interrogatory 6. If you now own or hold or ever did own or hold either of the bonds or coupons described in the second interrogatory, state whether or not, when you became the owner or holder thereof, you had been informed of or had inspected any record of the county court of Scotland county, in the State of Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time you received said information and the name of the person who informed you and all you know about said orders, their dates and contents.

Cross-interrogatory 7. State whether or not, at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory, you knew that either of said bonds had been issued or delivered by certain persons, purporting to act as president or presiding justice and clerk of the county court of Scotland county, to aid in the construction of any railroad or to pay for stock in any company organized under the general corporation law or general railroad law of the State of Missouri, adopted in Revised Statutes of Missouri of 1865; if so, designate the
307 name of such corporation and state all the facts connected therewith of which you then had knowledge.

Cross-interrogatory 8. If you hold or ever held either of the bonds or coupons described in the second interrogatory, state whether or not, at the time you became holder of said bonds or coupons or of either of same, you had in any manner been informed of the fact that any suit was pending concerning same or any application for injunction had been made, or that a restraining order by the circuit court of Scotland county had been granted restraining Charles Mety from delivering said bonds to the Missouri, Iowa and Nebraska Railway Company, it officers or agents, or to any other person or corporation, or that any order of any State court had been made concerning same; if so, state when, where, how, and from whom you received such information and the nature of such information, answering each of said subdivisions of the question.

Cross-interrogatory 9. State whether or not you ever heard or in any manner knew of the pendency of a certain suit instituted by Levi J. Wagner and others against the Missouri, Iowa and Nebraska

Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and thence carried by change of venue to the circuit court of Shelby county, Mo., in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company should be delivered up and cancelled; if so, state how, when, and where you learned of the institution or pendency of said suit.

308 Cross-interrogatory 10. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Du Sonchet, Thomas B. Hill, George S. Knox, Emily Knox, James B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin S. Smith, James Fitzhenry, F. T. Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A. Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Tobey & Co., or any other individual or corporate body who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county to the Missouri, Iowa, and Nebraska Railway Company had at any time actual notice of the pendency of a certain suit instituted by Levi J. Wagner and others against Charles Mety, the Missouri, Iowa and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining were null and void and should be delivered up for cancellation and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons; all the circumstances known to you affecting each of them, with actual notice of the pendency of said suit; the number of any bond or coupon which he took or received with such actual notice; the name of the individual or corporate body from whom same was received; the considera-

309 tion, if any, given therefor; the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory.

Cross-interrogatory 11. State whether or not you were ever advised or informed that said Missouri, Iowa and Nebraska Railway Company or the Iowa Railway Contracting Company or any individual or corporation executed any indemnifying bond or bonds to Charles Mety in order to secure the delivery of said bonds or coupons described in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where, and from whom you received said information, and also whether you joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

Cross-interrogatory 12. State whether or not you were ever advised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction either of the tax-payers of said county or of the resident voters of said county or of two-thirds of the qualified voters of said county to any subscription of stock to the Missouri, Iowa and Nebraska Railway Company or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

Cross-interrogatory 13. State whether or not, before becoming the holder of either or all of said bonds or coupons in the second
310 interrogatory described, you consulted or conversed with any person concerning the said bonds or coupons; if so, state all the facts connected with such conversation.

Cross-interrogatory 14. State whether or not at any time you have ever, directly or indirectly, offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged subscription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory or any litigation arising out of said transaction; if so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covenous transaction occurred.

Cross-interrogatory 15. State whether or not you ever have been or are now connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railway Company or a corporation or association styled Iowa Railroad Contracting Company; if so, detail the date, duration, and nature of such connection or association.

Cross-interrogatory 16. State whether or not the aforesaid Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company ever held or now hold any
311 interest in the bonds or coupons involved in this suit and described in the second interrogatory; if so, state the numbers of said bonds or coupons, the manner in which they were acquired, and when, how, and in what manner, and upon what conditions, and for what, if any, consideration they left the control of said companies or corporations or either of same, and to whom they were delivered.

Cross-interrogatory 17. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit; if so, describe accurately the nature of such interest, and, if such interest is described in writing, file herewith a copy of

such writing, or, if such writing be lost, describe the circumstances attending such loss, and detail contents of writing.

Cross-interrogatory 18. State whether or not you know of any permanent route adopted by the railroad company designated as the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route. If you have any written or printed matter relating to the adoption of such route, file same as an exhibit herein; if not under your con-, describe contents of such matter.

Cross-interrogatory 19. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and, if you have under your control any written or printed evidence of such consolidation, produce same and file it as an exhibit herein.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

A copy.
Attest: A. P. SELBY, *Clerk.*

312 *Commission.*

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } ss:

The President of the United States of America to Wm. F. Robb, Esq., of Pittsburgh, Pa., Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you, to be examined as witnesses in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County is defendant, all and every such person named in the interrogatories hereto attached and at such time and place as shall be named by you for that purpose; and we command you to examine all and every such person upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination; and you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal, directed to the clerk

of the circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 8th day of September, A. D. eighteen hundred and eighty-five.

Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Commission to Wm. F. Robb, Esq., No. 143 Fourth Ave., Pittsburgh, Pa., to take depositions on the part of the plaintiff in the above-entitled case.

Commissioner's fee	$5 00
Expenses	25
	$5 25

Paid by pl'ff.

Returned and filed the 23rd day of Sept., 1885. A. P. Selby, clerk.

To the honorable the judge of said court:

The execution of this commission will appear by certain testimony hereto annexed, all of which is respectfully submitted.

Pittsburgh, Pa., Sept. 14, 1885.

WILLIAM F. ROBB,
Commissioner.

313 The deposition of Addison L. Griffin, sworn and examined on this fourteenth day of September, A. D. 1885, at my office, No. 143 Fourth avenue, in the city of Pittsburgh, county of Allegheny, and State of Pennsylvania, under and by virtue of a commission issued out of the circuit court of the United States for the eastern district of Missouri, under the seal of said court and to me (William F. Robb) directed, for the examination of the said Addison L. Griffin, a witness in a certain cause depending in said court, wherein William Hill is the plaintiff and Scotland County, Missouri, is defendant, on the part of the plaintiff.

The said ADDISON L. GRIFFIN, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Answers to Interrogatories.

1. In answer to the first interrogatory: My name is Addison L. Griffin; reside in Pittsburgh, Allegheny county, Pennsylvania; am fifty years of age, and am president of the Keystone Bridge Company.

2. In answer to the second interrogatory: Yes; I received, some time during the year 1877, from Andrus B. Stone, coupons numbered three, four, five, and six that were cut from the Scotland

county bonds issued to the Missouri, Iowa and Nebraska Railroad Company; the numbers of the bonds were 2, 3, 145, 146, 147. There seems to have been five bonds, but I have only a memorandum of four coupons. I am unable to give the dates of the bonds or coupons. I gave these coupons to the First National Bank of Warsaw, Illinois, for collection, by order of Andrews B. Stone, who gave them to me for that purpose.

314 Some time after this—I don't remember the date—I received from Andrus B. Stone Scotland county bonds, issued to said railroad, Nos. 1, 2, 3, 86, 145, 146, and 147 for sale. I sold and delivered them to Arthur Bridgeman, Jr., of Keokuk, Iowa. My recollection is that the bonds were for one thousand dollars each and the coupons were for forty dollars each (eight per cent. bonds).

Answers to Cross-Interrogatories.

Cross-examination:

1. In answer to 1st X interrogatory he says: I never owned any of the bonds or coupons described in the above-entitled suit, and the coupons were merely sent mefor collection and the bonds for sale, as stated in my examination-in-chief.

2. In answer to 2d X interrogatory he says: I never owned the bonds, and I do not recollect what consideration Mr. Bridgeman paid for the bonds. The numbers of the bonds and coupons I have stated heretofore; don't remember now who was present.

3. In answer to 3d X interrogatory he says: I am not in anywise interested in the prosecution of the above-entitled cause and have not employed counsel or authorized any one else to do so for me.

4. In answer to 4th X interrogatory he says: I do know the plaintiff, but never made any arrangement with him or his agents for the prosecution of this action.

5. In answer to 5th X interrogatory he says: I have not.

315 6. In answer to the 6th X interrogatory he says: I do not now and never did hold any of said bonds, except as before stated. I never inspected any of the Scotland Co. records as to the subscription of said county to said railroad, and at the time of the sale of said bonds had not been informed anything about it.

7. In answer to the 7th X interrogatory he says: I did not know anything about it.

8. In answer to the 8th X interrogatory he says: I had not been so informed.

9. In answer to the 9th X interrogatory he says: I may have heard of such a suit, but having no interest in it cannot give any details.

10. In answer to the tenth X interrogatory he says: I do not know anything about it, except what I may have heard reported in a general way at the time.

11. In answer to the 11th X interrogatory he says: I never was advised or informed by any one as to the matters referred to.

12. In answer to the 12th X interrogatory he says: I do not know and never was informed anything about it.

13. In answer to the 13th X interrogatory he says: I had no conversation with any one on the subject, except that Andrews B. Stone sent the bonds to me for sale, and I sold them as before stated, and the coupons I gave to the First Nat'l Bank, Warsaw, Ill., for collection.

14. In answer to the 14th X interrogatory he says: I never did, directly or indirectly.

316 16. In answer to the 15th X interrogatory he says: I was with the Missouri, Iowa & Nebraska railroad from 1871 until 1875 as assistant superintendent and general freight agent. I have no connection with them now. My recollection is that the Iowa Railroad Contracting Company operated the road.

16. In answer to the 16th X interrogatory he says: They may have had an interest, but as the question of bonds had nothing to do with my department I am unable to give any information.

17. In answer to the 17th X interrogatory he says: I don't know whether they are interested or not.

18. In answer to the 18th X interrogatory he says: I do not know anything about said permanent route and have nothing under my control to show it.

19. In answer to the 19th X interrogatory he says: I do not know anything about the consolidation and I have not any written or printed evidence of it under my control.

ADDISON L. GRIFFIN.

I, William F. Robb, commissioner as aforesaid, do hereby certify that the foregoing deposition of Addison L. Griffin was taken before me at the time and place mentioned in the caption hereof; that the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth; that I examined him upon the interrogatories and cross-interrogatories hereunto annexed, and his answers thereto were written down by me in his presence, and after having read the same over to him as written down he subscribed his name thereto in my presence.

317 In testimony whereof I have hereunto set my hand and seal this fourteenth day of September, A. D. 1885.

WILLIAM F. ROBB, [SEAL.]
Commissioner.

The deposition of Alfred B. Hough is in the words and figures following, to wit:

Alfred B. Hough.

In the United States Circuit Court for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant.
} Nos. 1153 and 1287. Consolidated cause.

Interrogatories.

Interrogatories to Alfred B. Hough, on behalf of plaintiff, to be used in this and other causes as per stipulation.

1st. What is your name, age, residence, and occupation?

2nd. Did you at any time during the years 1871 and 1872 purchase any bonds issued by Scotland county, Missouri, to the Missouri, Iowa and Nebraska Railroad Company, and of the denomination of one thousand dollars each?

3rd. If you answer the second interrogatory in the affirmative, state when you purchased them, of whom, how many, the numbers thereof; whether they had attached to them all coupons not then matured; and if you have sold said bonds, state when you sold them, to whom, and for what.

4th. If your answer to the third interrogatory is in the affirmative, state whether at the time of purchasing said bonds you
318 knew or had heard that Levi J. Wagner and other tax-payers of Scotland county had brought suit in the circuit court of Scotland county or elsewhere against the justices of the county court of Scotland county, the treasurer of said county, the Missouri, Iowa and Nebraska Railroad Company, and Charles Mety, or either of them, the object and purpose of which was to enjoin Mety from delivering the bonds to the railroad company and to have them declared void and cancelled for want of authority in the county to subscribe to the stock of said railroad company or for any other purpose.

5th. At the time of purchasing said bonds, if you say you did purchase them, did you know or have any reason to know or suspect that said bonds or any of them were illegally or fraudulently issued?

6th. State any other facts within your knowledge concerning said bonds that you may think to be of interest to either party.

BAKER & HUGHES AND
J. H. OVERALL,
Att'ys for Pl'ff.

Cross-Interrogatories.

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff, *vs.* THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.	Nos. 1153 and 1287. Consolidated.

Cross-interrogatories to be administered to Alfred B. Hough, of the city of Cleveland, State of Ohio, a witness to be produced,
319 sworn, and examined under and by virtue of the annexed commission, before Elgin A. Angell, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said defendant.

X Int. 1. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit, viz., bonds, each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1, 1870, countersigned and delivered September 20 and December 11, 1871, payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars; if so, designate the numbers and amount of such bonds or coupons you may have owned or held; state when, where, from whom, and for what consideration you received same and whether or not you still own same and what induced you to become a holder thereof.

X Int. 2. If, having owned either of the aforesaid bonds or coupons, you ever sold same, state where, when, how, to whom, and for what consideration you sold same, the numbers of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction, and who was present at such sale, if any was made.

X Int. 3. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if so,
320 state the nature of your interest, whether you have employed counsel or authorized the employment of counsel therein, or are to receive any benefit therefrom; if so, what benefit.

X Int. 4. State whether or not you know the plaintiff or have ever made any arrangement with him or his agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

X Int. 5. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit or concerning the bonds or coupons therein described or sued on? If so, file copies thereof; if lost, state how, when, and where the loss occurred, and state contents of lost paper.

X Int. 6. If you now own or hold or ever did own or hold either of the bonds or coupons described in the second interrogatory, state whether or not, when you became the owner or holder thereof, you had been informed of or had inspected any record of the county court of Scotland county, in the State of Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time you received said information and the name of the person who informed you, and all you know about said orders, their dates and contents.

X Int. 7. State whether or not, at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory, you knew that either of said bonds had been issued or delivered by certain persons, purporting to act as president or presiding justice and clerk of the county court of Scotland county, to
321 aid in the construction of any railroad or to pay for stock in any company organized under the general corporation law or general railroad law of the State of Missouri, adopted in Revised Statutes of Missouri of 1865; if so, designate the name of such corporation and state all the facts connected therewith of which you then had knowledge.

X Int. 8. If you hold or ever held either of the bonds or coupons described in the second interrogatory, state whether or not at the time you became holder of said bonds or coupons or either of same you had in any manner been informed of the fact that any suit was pending concerning same or any application for injunction had been made, or that a restraining order by the circuit court of Scotland county had been granted restraining Charles Mety from delivering said bonds to the Missouri, Iowa and Nebraska Railway Company, its officers and agents, or to any other person or corporation, or that any order of any State court had been made concerning same; if so, state when, where, how, and from whom you received such information and the nature of such information, answering each of said subdivisions of the question.

X Int. 9. State whether or not you ever heard or in any manner knew of the pendency of a certain suit instituted by Levi J. Wagner and others against the Missouri, Iowa and Nebraska Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and thence carried by change of venue to the circuit court of Shelby county, Mo., in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been
322 issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company should be delivered up and cancelled; if so, state how, when, and where you learned of the institution or pendency of said suit.

X Int. 10. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Du Souchet, Thomas B. Hill, George S. Knox, Emily Knox, James

B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin S. Smith, James Fitzhenry, F. T. Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A. Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Tobey & Co., or any other individual or corporate body who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company had at any time actual notice of the pendency of a certain suit instituted by Levi J. Wagner and others against Charles Mety, the Missouri, Iowa and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining were null and void and should be delivered up for cancellation and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons; all the circumstances known to you affecting each of them, with
323 actual notice of the pendency of said suit; the number of any bond or coupon which he took or received with such actual notice; the name of the individual or corporate body from whom same was received; the consideration, if any, given therefor; the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory.

X Int. 11. State whether or not you were ever advised or informed that said Missouri, Iowa and Nebraska Railway Company or the Iowa Railway Contracting Company or any individual or corporation executed any indemnifying bond or bonds to Charles Mety in order to secure the delivery of said bonds or coupons described in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where, and from whom you received said information, and also whether you joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

X Int. 12. State whether or not you were ever advised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction either of the tax-payers of said county or of the resident voters of said county or of two-thirds of the qualified voters of said county to any subscription of stock to the Missouri, Iowa and Nebraska Railway Company or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

X Int. 13. State whether or not, before becoming the
324 holder of either or all of said bonds or coupons in the second interrogatory described, you consulted or conversed with any

person concerning the said bonds or coupons; if so, state all the facts connected with such conversation.

X Int. 14. State whether or not at any time you have ever, directly or indirectly, offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged subscription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory or any litigation arising out of said transaction; if so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covenous transaction occurred.

X Int. 15. State whether or not you ever have been or now are connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railway Company or a corporation or association styled Iowa Railroad Contracting Company; if so, detail the date, duration, and nature of such connection or association.

X Int. 16. State whether or not the aforesaid Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway
325 Contracting Company ever held or now hold any interest in the bonds or coupons involved in this suit and described in the second interrogatory; if so, state the numbers of said bonds and coupons, the manner in which they were acquired, and when, how, and in what manner, and upon what condition, and for what, if any, consideration they left the control of said companies or corporations or either of same, and to whom they were delivered.

X Int. 17. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit; if so, describe accurately the nature of such interest, and, if such interest is described in writing, file herewith a copy of such writing, or, if such writing be lost, describe the circumstances attending such loss, and detail contents of such writing.

X Int. 18. State whether or not you know of any permanent route adopted by the railroad company designated as the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route. If you have any written or printed matter relating to the adoption of such route, file same as an exhibit herein; if not under your control, describe contents of such matter.

X Int. 19. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and, if you have under your control any written or printed evidence of such consolidation, produce same and file it as an exhibit herein.

HENRY A. CUNNINGHAM,
Att'y for Defendant, Scotland County, Missouri.

326 *Commission.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

The President of the United States of America to Elgin A. Angell, of Cleveland, Ohio, Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause Alfred B. Hough to come before you to be examined as a witness in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County, Missouri, is defendant, and at such time and place as shall be named by you for that purpose; and we command you to examine said Alfred B. Hough, upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, as set out in the interrogatories and cross-interrogatories hereto annexed, and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to said examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination; and you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the eleventh day of August, A. D. eighteen hundred and eighty-five.

Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland county. Commission to Elgin A. Angell, of Cleveland, Ohio, to take depositions on the part of the plaintiff in the above-entitled case. Returned and filed the 28th day of August, 1885. A. P. Selby, clerk.

327 THE UNITED STATES OF AMERICA.

THE NORTHERN DISTRICT OF OHIO, } ss:
The County of Cuyahoga, }

Be it remembered that on the 19th day of August, 1885, I, Elgin A. Angell, of Cleveland, in the county of Cuyahoga and State of Ohio, having been appointed by the circuit court of the United States for the eastern district of Missouri a commissioner to examine Alfred B. Hough, Esq., of Cleveland, in a cause now pending in the said court, in which William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, did, on the said 19th day of August, 1885, cause and call the said Alfred B. Hough to personally appear before me, at my office, No. 47 Mercantile Bank building, in the city of Cleveland, in said county and State, to testify and the truth to say on the part of the plaintiff in the said cause pending as aforesaid; and the said Alfred B. Hough, being about the age of 47 years, and being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said matter aforesaid, did testify and depose as follows, to wit:

Answers to Interrogatories.

In reply to the first interrogatory to him put witness says: My name is Alfred B. Hough; I reside in Cleveland, Ohio; I am 47 years of age, and I have no occupation at present.

To the second question the witness says: I bought some $1,000 bonds at some time between 1871 and 1875; I cannot give the exact date. They were bonds of Scotland county issued to some railroad company; I do not know the exact name of the company.

328 To the third question witness replies: I bought nine one-thousand-dollar bonds of Oscar Townsend, of Cleveland, Ohio, Nos. 25, 26, 27, 89, 158, 159, 160, 161, and 162; they had attached all coupons not then due. I sold these bonds in August, 1875, through Mr. J. B. Dodge, cashier First Nat'l Bank of Warsaw, Ill., to some parties not named by him. I do not know whether Mr. Dodge bo't them for himself or for some one else. I received forty-five cents on the dollar for them.

To the fourth question the witness says: I never heard of such a suit before I owned the bonds or while I owned them or when I bought them, nor at any time after up to the present time.

To the fifth question the witness says: I never did.

To the sixth question the witness says: I do not know of any such facts.

Answers to Cross-Interrogatories.

To the first cross-interrogatory the witness deposes and says: In my reply to the third direct interrogatory I have given the number of all the bonds of Scotland county which I ever owned; I cannot now tell at what date they were issued or countersigned or delivered; I know that they were eight per cent. bonds and had coupons at-

tached. I have answered this question fully in my direct examination, except the consideration which I paid Mr. Townsend. I paid him fifty per cent. of the face value for them.

2 X. To the second interrogatory the witness says: I have answered this question fully in the direct examination, except
329 as to method of sale. I sold the bonds by correspondence with Mr. Dodge, as is described in my answer to the third interrogatory of my direct examination. I can't tell how many letters I wrote or received.

3 X. To the third cross-interrogatory the witness says: I am not a party in interest; I never employed counsel or authorized the employment of counsel; I know nothing about it; I am to have no benefit.

4 X. To the fourth cross-question the witness says: I saw a man two weeks ago here who said he was the plaintiff; I have no other acquaintance with him; I have made no arrangement with him or with his agents for the prosecution of this action.

To the fifth cross-question the witness says: I have signed no paper of any kind connected with this suit and none connected with these bonds, save the correspondence I had with Mr. Dodge about their sale ten years ago, which I have already described; I had two or three letters from Mr. Dodge and wrote two or three; I have not these letters now nor copies of those I wrote; I went to Europe about four years ago and before going destroyed large masses of any previous correspondence concerning matters which I deemed at that time entirely closed up; I can't state of their contents more than that I then wrote him asking him what he could get for them, and he replied; I then told him to sell them.

To the 6th cross-question the witness says: I never was informed of the record referred to or heard of it or inspected it or caused it to be inspected.

To the 7th cross-question the witness says: I knew these bonds were issued by Scotland county to aid in the construction of
330 some railroad; I had no knowledge except what I *de*tained from the face of the bonds; I do not now even remember what information I then had; I am, of course, unable to state now what facts I then knew; I do not think Mr. Townsend knew anything more than I did about the matters inquired of.

To the 8 cross-question the witness says: I never knew or heard of such a suit as is described in your question or of any suit about these bonds when I bought the bonds or while I held them or at any time afterwards until the taking of my testimony was broached to me some two or three weeks ago.

To the 9th cross-question the witness says: I never knew or heard of such a suit or of any suit in any manner affecting or relating to these bonds until within a few weeks past.

To the 10th cross-question the witness says: I never before heard of any of the persons named, except William Hill, and of him only as I have before stated; I know of no fact touching or relative to them or relating to the subject-matter of the inquiry; I have no information or knowledge about any of the persons, matters, or things

asked about; I never heard of any of them or about any of them before this moment; I never heard of the suit described before; I am in absolute ignorance regarding everything asked in the question.

To the 11th cross-question the witness says: I never before this moment heard of any such bonds or knew or was informed that any existed; I never heard before of Chas. Mety; I know nothing about it.

331 To the 12th cross-question the witness says: I never was advised or informed of the matters and things described in your question. I knew nothing about the election unless it was recited on the face of the bond, and I do not now know whether it was or not. I had no information except what I obtained from the face of the bond.

To the 13th interrogatory the witness says: I presume I talked with Mr. Townsend about the matter when I bought them; I do not know now what it was or what was said by either of us; I talked with no one else.

To the 14th interrogatory the witness says: I know nothing about the things asked for. I have never paid or caused to be paid or known that anything was paid to any agent or officer of Scotland county for any such purpose. I never before heard that anything was alleged by anybody to have been paid to any officer or agent or representative of said county for any such purpose.

To the 15th question the witness says: I have never been interested in or connected with either of the corporations named, and am not now.

To the 16th question the witness says: I know nothing about it.

To the 17th question the witness says: I don't know.

To the 18th cross-question the witness says: I know nothing of it.

To the 19th cross-question the witness says: I know nothing of it.

ALFRED B. HOUGH.

332 UNITED STATES OF AMERICA.

THE NORTHERN DISTRICT OF OHIO, *The County of Cuyahoga:*

I, Elgin A. Angell, of Cleveland, Ohio, do hereby certify, as commissioner appointed by the circuit court of the United States for the eastern district of Missouri to take the testimony of Alfred B. Hough, of Cleveland, on behalf of the plaintiff in a cause pending in the said court, wherein William Hill is plaintiff and The County of Scotland, in the State of Missouri, is defendant, that on the 19th day of August, 1885, I did cause the said Alfred B. Hough, of Cleveland, to appear before me, at my office, number 47 Mercantile Bank building, Cleveland, Ohio, at the hour of ten o'clock a. m.; that thereupon the said Alfred B. Hough was by me first duly sworn upon oath to tell the truth, the whole truth, and nothing but the truth in answer to the interrogatories and cross-interrogatories to be pro-

pounded to him; that thereupon I did proceed to examine the said witness upon the said interrogatories and cross-interrogatories; that I did reduce in his presence his answers to the same to writing, and that thereupon the said witness did in my presence, after reading carefully his said testimony, subscribe the same. I further certify that the said witness was by me sworn in my official capacity as a notary public within and for the said county of Cuyahoga and State of Ohio, and that no one was present save the witness.

In testimony whereof I have hereto set my hand and official seal, at Cleveland, Cuyahoga county, in the State of Ohio, this 19th day of August, 1885.

[SEAL.] ELGIN A. ANGELL,
Notary Public and Commissioner.

333 *Deposition of Oscar Townsend.*

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff,
vs.
THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.
} Nos. 1153 and 1287. Consolidated.

Interrogatories.

Interrogatories to be administered to Oscar Townsend, of the city of Cleveland, county of ——, State of Ohio, a witness to be produced, sworn, and examined, under and by virtue of the annexed commission, before Elgin A. Angell, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said defendant.

Interrogatory No. 1. State your name, age, present place of residence, and the State of which on the 1st of October, 1871, and the 1st of August, 1885, you were a citizen.

2. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit, viz., bonds, each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1st, 1870, countersigned and delivered September 20 and December 11, 1871,
334 payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars; if so, designate the numbers and amount of such bonds or coupons you may have owned or held; state when, where, from whom, and for what consideration you received same and whether or not you still own same and what induced you to become a holder thereof.

3. If, having owned either of the aforesaid bonds or coupons, you ever sold same, state where, when, how, to whom, and for what consideration you sold same, the numbers of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction, and who was present at such sale, if any was made.

4. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if so, state the nature of your interest, whether you have employed counsel or authorized the employment of counsel therein, or are to receive any benefit therefrom; if so, what benefit.

5. State whether or not you know the plaintiff or have ever made any arrangement with him or his agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

6. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit or concerning the bonds or coupons therein described or sued on. If so, file copies thereof; if lost, state how, when, and where the loss occurred, and state contents of lost paper.

7. If you now own or hold or ever did own or hold either of the bonds and coupons described in the second interrogatory,
335 state whether or not, when you became the owner or holder thereof, you had been informed of or had inspected any record of the county court of Scotland county, in the State of Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time you received said information and the name of the person who informed you and all you know about said orders, their dates and contents.

8. State whether or not, at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory, you knew that either of said bonds had been issued or delivered by certain persons, purporting to act as president or presiding justice and clerk of the county court of Scotland county, to aid in the construction of any railroad or to pay for stock in any company organized under the general corporation law or general railroad law of the State of Missouri, adopted in Revised Statutes of Missouri of 1865; if so, designate the name of such corporation and state all the facts connected therewith of which you then had knowledge.

9. If you hold or ever held either of the bonds or coupons described in the second interrogatory, state whether or not, at the time you became holder of said bonds or coupons or of either of same, you had in any manner been informed of the fact that any suit was pending concerning same or any application for injunction had been made or that a restraining order by the circuit court of Scotland county had been granted restraining Charles Mety from de-
336 livering said bonds to the Missouri, Iowa and Nebraska Railway Company, its officers or agents, or to any other person or corporation, or that any order of any State court had been made

concerning same; if so, state when, where, how, and from whom you received such information and the nature of such information, answering each of said subdivisions of the question.

10. State whether or not you ever heard or in any manner knew of the pendency of a certain suit instituted by Levi J. Wagner and others against the Missouri, Iowa and Nebraska Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and thence carried by change of venue to the circuit court of Shelby county, Mo, in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company should be delivered up and cancelled; if so, state how, when, and where you learned of the institution or pendency of said suit.

11. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Du Sonchet, Thomas B. Hill, George S. Knox, Emily Knox, James B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin Smith, James Fitzhenry, H. T. Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A. Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Tobey & Co., or any other individual or corporate body who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county
337 to the Missouri, Iowa and Nebraska Railway Company had at any time actual notice of the pendency of a certain suit instituted by Levi J. Wagner and others against Charles Mety, the Missouri, Iowa and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining were null and void and should be delivered up for cancellation and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons; all the circumstances known to you affecting each of them, with actual notice of the pendency of said suit; the number of any bond or coupon which he took or received with such actual notice; the name of the individual or corporate body from whom same was received; the consideration, if any, given therefor; the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory, especially the date at which notice of said suit was had by either of the parties named.

12. State whether or not you were ever advised or informed that the said Missouri, Iowa and Nebraska Railway Company or the Iowa Railway Contracting Company or any individual or corporation executed any indemnifying bond or bonds to Charles Mety in

order to secure the delivery of said bonds or coupons de-
338 scribed in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where, and from whom you received said information, and also whether you joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

13. State whether or not you were ever advised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction either of the tax-payers of said county or of the resident voters of said county or of two-thirds of the qualified voters of said county to any subscription of stock to the Missouri, Iowa and Nebraska Railway Company or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

14. State whether or not, before becoming the holder of either or all of said bonds or coupons in the second interrogatory described, you consulted or conversed with any person concerning the said bonds or coupons; if so, state all the facts connected with such conversation.

15. State whether or not at any time you have ever, directly or indirectly, offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged sub-
339 scription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory, or any litigation arising out of said transaction; if so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covinous transaction occurred.

16. State whether or not you ever have been or now are connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railway Company or a corporation or association styled Iowa Railroad Contracting Company; if so, detail the date, duration, and nature of such connection or association.

17. State whether or not the aforesaid Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company ever held or now hold any interest in the bonds or coupons involved in this suit and described in the second interrogatory; if so, state the numbers of said bonds or coupons, the manner in which they were acquired, and when, how, and in what manner, and upon what conditions, and for what, if any, consideration they left the control of said companies or corporations or either of same, and to whom they were delivered.

18. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit; if so, describe accurately the nature of such interest, and, if such
340 interest is described in writing, file herewith a copy of such writing, or, if such writing be lost, describe the circumstances attending such loss, and detail contents of such writing.

19. State whether or not you know of any permanent route adopted by the railroad company designated as the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route; if you have any written or printed matter relating to the adoption of such route, file same as an exhibit herein; if not under your control, describe contents of such matter.

20. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and, if you have under your control any written or printed evidence of such consolidation, produce same and file it as an exhibit herein.

HENRY A. CUNNINGHAM,
Att'y for Defendant, Scotland County.

341 *Clerk's Certificate to Interrogatories.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } ss:

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true copy of interrogatories to be administered to O car Townsend, in cases Nos. 1153 & 1287, of William Hill, plaintiff, against The County of Scotland, in the State of Missouri, defendant, consolidated, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 24th day of August, in the year of our Lord eighteen hundred and eighty-five.

[SEAL.]

A. P. SELBY,
Clerk of said Court,
By —— ——, *Deputy.*

[Endorsed:] Nos. 1153 & 1287, consolidated. United States circuit court, eastern district of Missouri. William Hill against The County of Scotland, in the State of Missouri. Duly certified copy of interrogatory to be administered to Oscar Townsend in the above-entitled cause.

342 *Commission.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

The President of the United States of America to Elgin A. Angell, Cleveland, Ohio, Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause Oscar Townsend to come before you to be examined as a witness in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County, Missouri, is defendant, and at such time and place as shall be named by you for that purpose; and we command you to examine said Townsend, upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, as set forth in the interrogatories hereto annexed, and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination; and you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the second day of September, A. D. eighteen hundred and eighty-five.

Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Commission to Elgin A. Angell, of Cleveland, Ohio, to take depositions on the part of the defendant in the above-entitled case. Returned and filed the 17th day of Sept'r, 1885. A. P. Selby, clerk.

343 THE UNITED STATES OF AMERICA,
The Northern District of Ohio:

Be it remembered that on the 14th day of September, 1885, I, Elgin A. Angell, a commissioner duly appointed by the circuit court of the United States for the eastern district of Missouri to take the testimony of Oscar Townsend, Esq., of Cleveland, in a cause pending in the said circuit court, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, to be read in evidence on the part of the defendant, did cause — to be and to appear before me, at my office, in the city of Cleveland, in the county of Cuyahoga, and the State of Ohio, on the said 14th day of September, 1885, at 4 o'clock in the afternoon of said day; and the said Oscar Townsend, having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, did say and depose as follows, namely:

Answers to Interrogatories.

Int. 1. To the first interrogatory to him put the witness says: My name is Oscar Townsend; I live at Cleveland, Ohio; am 50 years old, and was, on both of the dates asked for, a citizen of Ohio.

Int. 2. To the second interrogatory the witness says: I did own some Scotland county 8 per cent. bonds issued to the Missouri, Iowa & Nebraska R'y Co.; I can't tell the date of issue or date they bore, nor can I state how many I bought or owned nor the number of the bonds; they had coupons attached; don't now remember how many coupons; I bought them from the Iowa Railway *Company* Construction Company; I don't now remember the date when I bought them nor at what price; I think 50 per cent.; I don't now own any of them; I was induced to buy them because I thought them cheap and reasonable.

344 Int. 3. I sold the bonds the same year I bought them and at same price. I sold some to Mr. A. B. Hough, some, I think, to Alfred Ely, and possibly some to some other parties. I can't give the exact date nor the number the bonds nor the amount sold to each. I can't remember, of course, what was said nor who was present at the sale.

Ans. 4. I have not any interest. I have not employed counsel. I am to have no benefit. I know nothing about it.

Ans. 5. I do not know the plaintiff, William Hill; never heard of him before, and have no arrangement with him.

Ans. 6. I have received no letters, papers, bonds, or contracts about said *said;* I know nothing about it. I never wrote any that I know. I may have written some letters when I bought the bonds; don't know where they are; have not got them now. I do not know their contents, if there were any.

Ans. 7. To the 7th question the witness says: I was never informed about the records of Scotland county; never examined them or caused them to be examined; know nothing about them.

To the 8th question the witness says: I don't know now that I ever had any information or knowledge about the issue of these

bonds by the justice or clerk of the county court, nor did I know that they were issued to aid in the construction of a railroad or to pay for stock unless it was so stated on the face of the
345 bond. I presume I read the bonds and that I knew what was stated on their face. I can't tell now anything more about it.

9th Ans. To the 9th question the witness says: I knew nothing of nor had I heard anything whatever, when I bo't them, of any litigation about the bonds nor since until this moment. I never before heard of Mr. Mety nor of any injunction or restraining order.

10 Ans. To the 10th question the witness says: I have never had any information until this moment about any litigation whatever relative -- or touching these bonds.

11 Ans. To the 11th question the witness says: I know nothing of the matters asked for or about in the 11th question.

12th Ans. I know nothing about it, nor did I ever hear of it before.

13th Ans. To the 13th question the witness says: I know nothing of it; never heard of it or about it.

14th Ans. To the 14th question the witness says: I have no recollection now of any conversation or consultation with anybody about them.

15th Ans. To the 15th question the witness says: I know nothing of it, nor did I ever know anything of it.

16th Ans. To the 16th question the witness says: I owned one share in the Iowa R'y Contracting Company; don't know how long I owned it; lost all I paid for it; it was a dead loss to me.

17th Ans. To the 17th question the witness says: I have already told all I know about the matter in my answer to the 2d interrogatory.

346 18th Ans. To the 18th question the witness says: I know nothing about it.

19th Ans. To the 19th question the witness says: I know nothing about it; never did.

20th Ans. To the 20th question the witness says: I know nothing about it; have nothing printed or written on the subject; I never knew anything about it.

OSCAR TOWNSEND.

I, Elgin A. Angell, of Cleveland, Ohio, a commissioner appointed by the circuit court of the United States for the eastern district of Missouri to take the testimony of Oscar Townsend, of Cleveland, Ohio, to be read in evidence on the part of the defendant in a cause pending in the said court, in which William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, do hereby certify that on the 14th day of September, 1885, at 4 o'clock in the afternoon, I did cause to be and appear before me, at my office, No. 47, Mercantile National Bank building, Cleveland, Ohio, and that thereupon I did first administer an oath to the said Oscar Townsend and he did swear that he would tell the truth, the whole truth, and nothing but the truth in the said matter; and thereupon the said

witness was by me examined duly upon the interrogatories set forth in the said commission, and the said answers to the same were by me reduced to writing in the presence of the witness; and thereupon the said answers of the said witness were by me read to him and were by him subscribed in my presence.

Witness my hand and official seal, at Cleveland, Ohio, this 14th day of September, in the year 1885.

[SEAL.] ELGIN A. ANGELL,
Commissioner and Notary Public for the County of Cuyahoga, in the State of Ohio.

347 *Deposition of William H. Gebhard.*

Interrogatories.

Interrogatories to be administered to each of the following persons: Andrus B. Stone and William H. Gebhard, both of the city of New York, State of New York, witnesses to be produced, sworn, and examined under and by virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named, in a certain cause pending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said plaintiff.

1st. What is your name, age, and residence?

2nd. Were you ever the owner of any bonds dated September 1st, 1870, issued by Scotland County, Missouri, to the Missouri, Iowa and Nebraska Railway Company and of the denomination of one thousand dollars each?

3rd. If in answer to the second interrogatory you say you were the owner of such bonds, then state further when you became such owner; what were the numbers of such bonds owned by you; whether said bonds had attached to them all unmatured coupons; what you paid for said bonds; whether you have disposed of said bonds and coupons; and, if disposed of, state to whom, where the purchaser resides, and what you received for them; if any coupons have been sued on, state circumstances placing them in suit,
348 the numbers of such coupons and numbers of bonds from which detached.

4th. At the time of purchasing said bonds, if you say you did purchase some of them, did you know or had you ever heard that Levi J. Wagner and other tax-payers of Scotland county had brought suit in the circuit court of Scotland county or elsewhere against the justices of the county court of Scotland county, the treasurer of said county, the Missouri, Iowa and Nebraska Railway Company, and Charles Mety or either of them, the object and purpose of which was to enjoin Mety from delivering the bonds to the railroad company and to have them declared void and cancelled for want of authority in the county to subscribe to the stock of said railroad company or for any other purpose?

5th. At the time of purchasing said bonds, if you say you did purchase some of them, did you know or have any reason to know that said bonds or any of them were illegally or fraudulently issued?

BAKER & HUGHES, AND
JOHN H. OVERALL,
Att'ys for Pl'ff.

A copy.
Attest: A. P. SELBY, *Clerk.*

Cross-Interrogatories.

In the Circuit Court of the United States, for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff,
vs.
THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.
} Nos. 1153 and 1287. Consolidated.

349 Cross-interrogatories to be administered to Andrus B. Stone and Wm. H. Gebhard, of the city of New York, county of ——, State of New York, *a* witness to be produced, sworn, and examined under and by *the* virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the county of Scotland, in the State of Missouri, is defendant, on the part of said defendant

Cross-interrogatory No. 1. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit, viz., bonds, each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1, 1870, countersigned and delivered September 20 and December 11, 1871, payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars; if so, designate the numbers and amount of such bonds or coupons you may have owned or held. State when, where, from whom, and for what consideration you received same, and whether or not you still own same and what induced you to become a holder thereof.

Cross-interrogatory 2. If, having owned either of the aforesaid bonds or coupons, you ever sold same, state where, when, how, to
to whom, and for what consideration you sold same, the num-
350 bers of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction and who was present at such sale, if any was made.

Cross-interrogatory 3. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if

so, state the nature of your interest—whether you have employed counsel or authorized the employment of counsel therein or are to receive any benefit therefrom; if so, what benefit.

Cross-interrogatory 4. State whether or not you know the plaintiff or have ever made any arrangement with him or his agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

Cross-interrogatory 5. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit or concerning the bonds or coupons therein described or sued on? If so, file copies thereof; if lost, state how, when, and where the loss occurred, and state contents of lost paper.

Cross-interrogatory 6. If you now own or hold or ever did own or hold either of the bonds or coupons described in the second interrogatory state whether or not, when you became the owner or holder thereof, you had been informed of or had inspected any record of the county court of Scotland county, in the State of Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time
351 you received said information and the name of the person who informed you, and all you know about said orders, their dates and contents.

Cross-interrogatory 7. State whether or not, at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory, you knew that either of said bonds had been issued or delivered by certain persons, purporting to act as president or presiding justice and clerk of the county court of Scotland county, to aid in the construction of any railroad or to pay for stock in any company organized under the general corporation law or general railroad law of the State of Missouri, adopted in revised statutes of Missouri of 1865; if so, designate the name of such corporation and state all the facts connected therewith of which you then had knowledge.

Cross-interrogatory 8. If you hold or ever held either of the bonds or coupons described in the second interrogatory state whether or not, at the time you became holder of said bonds or coupons or of either of same, you had in any manner been informed of the fact that any suit was pending concerning same or any application for injunction had been made, or that a restraining order by the circuit court of Scotland county had been granted, restraining Charles Mety from delivering said bonds to the Missouri, Iowa and Nebraska Railway Company, its officers or agents, or to any other person or corporation, or that any order of any State court had been made concerning same; if so, state when, where, how, and from whom you received such information and the nature of such information, answering each of said subdivisions of the question.

Cross-interrogatory 9. State whether or not you ever heard
352 or in any manner knew of the pendency of a certain suit instituted by Levi J. Wagner and others against the Mis-

souri, Iowa and Nebraska Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and thence carried by change of venue to the circuit court of Shelby county, Mo., in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company should be delivered up and cancelled; if so, state how, when, and where you learned of the institution of said suit.

Cross-interrogatory 10. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Du Sonchet, Thomas B. Hill, George S. Knox, Emily Knox, James B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin S. Smith, James Fitzhenry, F. T. Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A. Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Tobey & Co., or any other individual or corporate body, who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company, had at any time actual notice of the pendency of a certain suit instituted by Levi J. Wagner and others against Charles Mety, the Missouri, Iowa and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court
353 of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining were null and void and should be delivered up for cancellation, and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons, all the circumstances known to you affecting each of them with actual notice of the pendency of said suit, the number of any bond or coupon which he took or received with such actual notice, the name of the individual or corporate body from whom same was received, the consideration, if any, given therefor, the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory.

Cross-interrogatory 11. State whether or not you were ever advised or informed that said Missouri, Iowa and Nebraska Railway Company, or the Iowa Railway Contracting Company, or any individual or corporation executed any indemnifying bond or bonds to Charles Mety in order to secure the delivery of said bonds or coupons described in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where and from whom you received said information, and also whether you joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

Cross-interrogatory 12. State whether or not you were ever ad-

vised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered
354 without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction, either of the tax-payers of said county, of the resident voters of said county, or of two-thirds of the qualified voters of said county, to any subscription of stock to the Missouri, Iowa and Nebraska Railway Company, or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

Cross-interrogatory 13. State whether or not before becoming the holder of either or all of said bonds or coupons in the second interrogatory described you consulted or conversed with any person concerning the said bonds or coupons. If so, state all the facts connected with such conversation.

Cross-interrogatory 14. State whether or not at any time you have ever directly or indirectly offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged subscription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company, or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory or any litigation arising out of said transaction. If
355 so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covinous transaction occurred.

Cross-interrogatory 15. State whether or not you ever have been or are now connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railroad Company or a corporation or association styled Iowa Railroad Contracting Company. If so, detail the date, duration, and nature of such connection or association.

Cross-interrogatory 16. State whether or not the aforesaid Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company ever held or now hold any interest in the bonds or coupons involved in this suit and described in the second interrogatory. If so, state the numbers of said bonds or coupons, the manner in which they were acquired, and when, how, and in what manner and upon what conditions, and for what, if any, consideration they left the control of said companies or corporations or either of the same and to whom they were delivered.

Cross-interrogatory 17. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit. If so, describe accurately the nature of such interest, and if such interest is described in writing, file herewith a copy of

such writing, or if such writing be lost, describe the circum-
356 stances attending such loss and detail contents of such writing.

Cross-interrogatory 18. State whether or not you know of any permanent route adopted by the railroad company designated as the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route. If you have any written or printed matter relating to the adoption of such route, file same as an exhibit herein; if not under your control, describe contents of such matter.

Cross-interrogatory 19. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and if you have under your control any written or printed evidence of such consolidation, produce same and file it as an exhibit herein.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

A copy.
Attest: A. P. SELBY, *Clerk.*

357 *Commission.*

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } ss:

The President of the United States of America to Edwin F. Corey, of New York city, N. Y., Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you, to be examined as witnesses in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County is defendant, all and every such person named in the interrogatories hereto attached, and at such time and place as shall be named by you for that purpose; and we command you to examine all and every such person upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and that you do take such his examination and reduce the same to writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity and attach the same to his examination, and you will return the same and all exhibits produced to you, annexed hereto, carefully closed up and under your seal, directed to the clerk of the

circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 8th day of September, A. D. eighteen hundred and eighty-five. Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] No-. 1153 & 1287. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Commission to Edwin F. Corey, No. 54 Wall St., New York city, to take depositions on the part of the plaintiff in the above-entitled case. Returned and filed the — day of ——, 188-. —— ——, clerk.

358 The deposition of William H. Gebhard, a witness produced, sworn, and examined on the eighteenth day of September, A. D. 1885, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the office of Edwin F. Corey, No. 54 Wall street, in the city, county, and State of New York, pursuant to the annexed commission and interrogatories and cross-interrogatories thereto annexed, before me, Edwin F. Corey, the commissioner in said commission named, in a certain cause now depending in the circuit court of the United States for the eastern district of Missouri between William Hill, plaintiff, and Scotland County, defendant, on the part of the plaintiff.

The said WILLIAM H. GEBHARD, of lawful age, being by me duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and being examined upon the interrogatories to him propounded and hereto annexed, did depose and say:

Answers to Interrogatories.

In answer to interrogatory 1st. William Henry Gebhard; I am about 58 years of age, and reside in the city of New York.

In answer to interrogatory 2d. Yes.

In answer to interrogatory 3d. I became such owner on or about the 1st of November, 1871. The bonds were numbered 13, 14, 15, 100, 196, 197, 198, 199, and 200. All of the unmatured coupons were attached to said bonds when I became their owner. I paid fifty per cent. of the face value of said bonds in cash or $4,500 for the
359 nine bonds. I did sell the said nine bonds to the First National Bank of Warsaw, Illinois, at Warsaw, Illinois, and received $12,000 in cash in payment therefor. I did send some coupons to the First National Bank of Warsaw, Illinois, to enforce their payment. I think the coupons sent by me were numbers 3, 4, 5, and 6 off of each of the nine bonds before named.

In answer to interrogatory 4. No; I never heard of the matters enquired about; otherwise I would not have purchased the bonds at any price.

In answer to interrogatory 5th. No; I knew nothing about it.

Answers to Cross-Interrogatories.

In answer to cross-interrogatory 1st. Yes; I did own bonds numbers 13, 14 (E. F. C.), 15, 100, 196, 197, 198, and 199, and 200 of those described, with the coupons attached in full on each. I purchased them about November 1st, 1871, in the city of New York, from the Iowa Railroad Contracting Company, and paid them as consideration fifty per cent. of the face value of the bonds, or $4,500. I am not now the owner of any of said bonds. I purchased them because I thought them to be a good investment.

In answer to cross-interrogatory 2nd. I did sell the same in Warsaw, Illinois, by letter, I being here in New York. I sold them about March 16th, 1883, to the 1st National Bank of Warsaw, Illinois. I sold all of the nine bonds which I have before described, amounting to nine thousand dollars, with the coupons annexed, and received a sight draft on New York for twelve thousand dollars in payment therefor, which draft was paid. I don't know what was said at the time. No one could have been present, as the
360 transaction was negotiated entirely by letters and telegrams between the 1st National Bank, at Warsaw, Illinois, and myself, in New York.

In answer to cross-interrogatory 3d. I am not in anywise a party in interest; my sale of the bonds was absolute and all my interest in them ceased at the time of their sale.

In answer to cross-interrogatory 4th. I do not know positively who the plaintiff is, but suppose it is Mr. William Hill, of Warsaw, Illinois, who is president of the 1st National Bank of Warsaw. I am acquainted with him. I have no arrangement with him or his agents and never made any arrangement with him or them, or any interest whatsoever in the prosecution of a suit or suits against Scotland county.

In answer to cross interrogatory 5th. I have not.

In answer to cross-interrogatory 6th. I never received any information relative to the matters enquired about, nor did I ever inspect any record whatever relative to said bonds.

In answer to cross-interrogatory 7th. All that I knew was in a general way that the bonds purchased by me were for a subscription to induce the Iowa Railroad Contracting Company to build a railroad to benefit Scotland county.

In answer to cross-interrogatory 8th. No; I did not have such information.

In answer to cross-interrogatory 9th. No; I never heard of such a suit.

361 In answer to cross-interrogatory 10th. No; I do not know anything about this matter.

In answer to cross-interrogatory 11th. No; I was never so advised or informed.

In answer to cross-interrogatory 12th. No; I was never so advised.

In answer to cross-interrogatory 13th. I can't recollect that I consulted or conversed with any person except the officers of the Iowa Railroad Contracting Company, who, if I recollect rightly, asked me to invest in those bonds.

In answer to cross-interrogatory 14th. To all the queries contained in this interrogatory I answer, No.

In answer to cross-interrogatory 15th. I was a stockholder in the Missouri, Iowa and Nebraska Railway Company. I cannot now fix the date that I became a stockholder therein. I was also a stockholder of the Iowa Railroad Contracting Company. I think I was one of the many unfortunate original subscribers to that company, but I do not remember the date. I sold out my stock to the Wabash, St. Louis & Pacific Railroad Company, if I recollect rightly.

In answer to cross-interrogatory 16. The Iowa Railroad Contracting Company must have had an interest in the bonds owned by me, as I purchased them from that company; what that interest was I do not know, nor do I know whether or not they now have an interest in the bonds and coupons involved in this suit.

In answer to cross-interrogatory 17th. I am under the impression that both of the companies have died a natural death. I do
362 not believe that they or either of them or their survivors have any interest in the suit, if either of them still exist.

In answer to cross-interrogatory 18th. I do not know anything about this matter.

In answer to cross-interrogatory 19th. No; I do not know anything about that matter.

WILLIAM H. GEBHARD.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

EDWIN F. COREY,
Commissioner.

UNITED STATES OF AMERICA.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

I, Edwin F. Corey, the commissioner named in the annexed commission issued out of the clerk's office of the circuit court of the United States for the eastern district of Missouri, do hereby certify that, in pursuance of said commission and of the interrogatories thereto annexed, came before me at my office, No. 54 Wall street, in the city, county, and State of New York, William H. Gebhard, who was by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in controversy aforesaid, and, in answer to the several interrogatories and cross-interrogatories propounded to him; that he was examined upon said interrogatories and cross-interrogatoriess and his depo-

sition reduced to writing by me and subscribed and sworn to by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

363 I further certify that said William H. Gebhard is a resident of the city, county, and State of New York.

Given at said city, county, and State of New York this 18th day of September, A. D. 1885.

EDWIN F. COREY, [SEAL.]
Commissioner.

Pending the reading of the deposition of William H. Gebhart the court said:

As to the question of numbers, perhaps it is necessary to keep an account of these. The jury may as well understand the strain of this case may be whether the party suing here had notice, and therefore, as you trace this matter, you may put a double cross on your list there to show that those bonds came to him without notice.

Mr. OVERALL: The bonds of Stone and Griffin are 1, 2, 3, 86, 145, 146, 147. Mr. Hough testified as to bonds 25, 26, 27, 158, 159, 160, 161, 162, and 89. Mr. Gebhart testifies as to 151, 196, 197, 198, 199, and 200.

The deposition of Edward C. Kirk was then read, and the following bonds were tallied by the juror: 10, 11, 12, 88, 85, 138, 139, 140, 141, 142, 56, 57, 93, 178, 179, 16, 17, 18, 63, 64, 65, 66, 67, 68, 69, 70, 81, 82, 187, 188, 189, 190, 97, 98, 29, 30, 31, 173, 174, 175, 176, 92, 4, 5, 6, 90, 163, 164, 165, 166, 167.

Mr. OVERALL: We have taken the deposition of the other member of the firm of S. H. Toby & Co. He testified to substantially the same facts.

Mr. CUNNINGHAM: Certainly; it is not necessary to read it.

364 Mr. OVERALL: We will consider the deposition as being read.

Deposition of Edward C. Kirk.

Interrogatories.

Interrogatories to be administered to each of the following persons: Edward C. Kirk and Salathial Tobey, both of the city of New York, State of New York, witnesses to be produced, sworn, and examined under and by virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named, in a certain cause pending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said plaintiff.

1st. What is your name, age, residence? And, if a member of a firm, give name of firm and names of members thereof.

2nd. Were you ever a member of the firm of S. H. Tobey & Co., bond brokers in New York city?

3d. Did you or said firm of S. H. Tobey & Co. ever purchase any bonds dated September 1st, 1870, issued by Scotland county, Missouri, to the Missouri, Iowa and Nebraska Railroad Company, and

of the denomination of one thousand dollars each? If your answer to this interrogatory is yes, then state how many bonds you or said firm bought, the numbers thereof, when they were purchased, of whom purchased, and at what price.

4th. If your answer to fourth interrogatory is that you or
365 said firm did during said period purchase such bonds, state what you or it did with them; and, if you or it sold them, to whom they were sold, at what price, and where the purchasers resided.

5th. At the time of purchasing said bonds, if you say that same were purchased by you or said firm of S. H. Tobey & Co., had you or any member of said firm, to your knowledge, ever heard that Levi J. Wagner and other tax-payers of Scotland county had brought suit in the circuit court of Scotland county or elsewhere against the justices of the county court of Scotland county, the treasurer of said county, the Missouri, Iowa and Nebraska Railway Company, and Charles Mety, or either of them, the object and purpose of which was to enjoin Mety from delivering the bonds to the railway company and to have them declared void and cancelled for want of authority in the county to subscribe to the stock of said railroad company or for any other purpose?

6th. At the time of purchasing said bonds, if you say they were purchased by you or said firm of S. H. Tobey & Co., did you know or have any reason to know that said bonds or any of them were illegally or fraudulently issued?

7th. Give names of members of firm of S. H. Tobey & Co.

BAKER & HUGHES AND
JOHN H. OVERALL,
Att'ys for Pl'ff.

A copy.
Attest: A. P. SELBY, *Clerk.*

366 *Cross-Interrogatories.*

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff, *vs.* THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.	Nos. 1153 and 1287. Consolidated.

Cross-interrogatories to be administered to Edward C. Kirk and Salathial Tobey, of the city of New York, county of ——, State of New York, a witness to be produced, sworn, and examined, under and by virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and the County of Scotland, in the State of Missouri, is defendant, on the part of said defendant.

Cross-interrogatory No. 1. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit,

viz., bonds, each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1, 1870, countersigned and delivered September 20 and December 11, 1871, payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars; if so, designate the numbers and amount of such bonds or coupons you may have owned or held; state when, where,
367 from whom, and for what consideration you received same and whether or not you still own same and what induced you to become a holder thereof.

Cross-interrogatory 2. If, having owned either of the aforesaid bonds or coupons, you ever sold same, state where, when, how, to whom, and for what consideration you sold same, the numbers of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction and who was present at such sale, if any was made.

Cross-interrogatory 3. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if so, state the nature of your interest, whether you have employed counsel or authorized the employment of counsel therein, or are to receive any benefit therefrom; if so, what benefit.

Cross-interrogatory 4. State whether or not you know the plaintiff or have ever made any arrangement with him or his agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

Cross-interrogatory 5. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit or concerning the bonds or coupons therein described or sued on? If so, file copies thereof; if lost, state how, when, and where the loss occurred and state contents of lost paper.

Cross-interrogatory 6. If you now own or hold or ever did own or hold either of the bonds or coupons described in the second interrogatory, state whether or not, when you became the owner or holder thereof, you had been informed of or had inspected any record
368 of the county court of Scotland county, in the State of Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time you received said information and the name of the person who informed you and all you know about said orders, their dates and contents.

Cross-interrogatory 7. State whether or not at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory you knew that either of said bonds had been issued or delivered by certain persons, purporting to act as president or presiding justice and clerk of the county court of Scotland county, to aid in the construction of any railroad or to pay for stock in any company organized under the general corpora-

tion law or general railroad law of the State of Missouri, adopted in Revised Statutes of Missouri of 1865; if so, designate the name of such corporation and state all the facts connected therewith of which you then had knowledge.

Cross-interrogatory 8. If you hold or ever held either of the bonds or coupons described in the second interrogatory, state whether or not at the time you became holder of said bonds or coupons or either of same you had in any manner been informed of the fact that any suit was pending concerning same or any application for injunction had been made, or that a restraining order by the circuit court of Scotland county had been granted restraining Charles Mety from delivering said bonds to the Missouri, Iowa and Nebraska Railway Company, its officers or agents, or to any other person or corporation, or that any order of any State court had been made concerning the same; if so, state when, where, how,
369 and from whom you received such information and the nature of such information, answering each of said subdivisions of the question.

Cross-interrogatory 9. State whether or not you ever heard or in any manner knew of the pendency of a certain suit instituted by Levi J. Wagner and others against the Missouri, Iowa and Nebraska Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and then carried by change of venue to the circuit court of Shelby county, Mo., in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company should be delivered up and cancelled; if so, state how, when, and where you learned of the institution or pendency of said suit.

Cross-interrogatory 10. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Du Sonchet, Thomas B. Hill, George S. Knox, Emily Knox, James B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin S. Smith, James Fitzhenry, F. T. Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A. Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Tobey & Co., or any other individual or corporate body who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company had at any time actual notice of the pendency of a certain
370 suit instituted by Levi J. Wagner and others against Charles Mety, the Missouri, Iowa, and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining

were null and void and should be delivered up for cancellation and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons; all the circumstances known to you affecting each of them, with actual notice of the pendency of said suit; the number of any bond or coupon which he took or received with such actual notice; the name of the individual or corporate body from whom same was received; the consideration, if any, given therefor; the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory.

Cross-interrogatory 11. State whether or not you were ever advised or informed that said Missouri, Iowa, and Nebraska Railway Company or the Iowa Railway Contracting Company or any individual or corporation executed any indemnifying bond or bonds to Charles Mety in order to secure the delivery of said bonds or coupons described in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where, and from whom you received said information, and also whether you
371 joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

Cross-interrogatory 12. State whether or not you were ever advised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction either of the tax-payers of said county or of the resident voters of said county or of two-thirds of the qualified voters of said county to any subscription of stock to the Missouri, Iowa, and Nebraska Railway Company or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

Cross-interrogatory 13. State whether or not, before becoming the holder of either or all of said bonds or coupons in the second interrogatory described, you consulted or conversed with any person concerning the said bonds or coupons; if so, state all the facts connected with such conversation.

Cross-interrogatory 14. State whether or not at any time you have ever, directly or indirectly, offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged subscription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory or any litigation arising out of said
372 transaction; if so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covenous transaction occurred.

Cross-interrogatory 15. State whether or not you ever have been or now are connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railway Company or a corporation or association styled Iowa Railroad Contracting Company; if so, detail the dates, duration, and nature of such connection or association.

Cross-interrogatory 16. State whether or not the aforesaid Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company ever held or now hold any interest in the bonds or coupons involved in this suit and described in the second interrogatory; if so, state the number of said bonds or coupons, the manner in which they were acquired, and when, how, and in what manner and upon what conditions and for what, if any, consideration they left the control of said companies or corporations or either of same and to whom they were delivered.

Cross-interrogatory 17. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit; if so, describe accurately the nature of such interest, and if such interest is described in writing file herewith a copy of such writing, or if such writing is lost describe the circumstances attending such loss, and detail contents of such writing.

Cross-interrogatory 18. State whether or not you know any permanent route adopted by the railroad company designated as
373 the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route; if you have any written or printed matter relating to the adoption of such route file same as an exhibit herein; if not under your control, describe contents of such matter.

Cross-interrogatory 19. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and if you have under your control any written or printed evidence of such consolidation produce same and file it as an exhibit herein.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

A copy.
Attest: A. P. SELBY, *Clerk.*

374 *Commission.*

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *ss:*

The President of the United States of America to Edwin F. Corey, of New York city, N. Y., Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you to be examined as witnesses in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County is defendant, all and every such person named in the interrogatories hereto attached, and at such time

and place as shall be named by you for that purpose; and we command you to examine all and every such person, upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties, and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination; and you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 8th day of September, A. D. eighteen hundred and eighty-five.

Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Commission to Edwin F. Corey, No. 54 Wall St., New York city, to take depositions on the part of the plaintiff in the above-entitled case. Returned and filed the — day of ——, 188–. —— ——, clerk.

375 The deposition of Edward C. Kirk, a witness produced, sworn, and examined on the nineteenth day of September, A. D. 1885, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the office of Edwin F. Corey, No. 54 Wall street, in the city, county, and State of New York, pursuant to the annexed commission and interrogatories and cross-interrogatories thereto annexed, before me, Edwin F. Corey, the commissioner in said commission named, in a certain cause now depending in the circuit court of the United States for the eastern district of Missouri, between William Hill, plaintiff, and Scotland County, defendant, on the part of the plaintiff.

The said EDWARD C. KIRK, of lawful age, being by me duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth touching his knowledge of anything relating to said matter in controversy between the said parties and being

examined upon the interrogatories and cross-interrogatories to him propounded and hereto annexed, did depose any say:

Answers to Interrogatories.

In answer to interrogatory 1st: Edward C. Kirk; fifty years of age; I reside in New York; I am a member of the firm of Tobey & Kirk, composed of S. H. Tobey and myself.

In answer to interrogatory 2d: I was.

In answer to interrogatory 3d: The firm of S. H. Tobey & Co. purchased Scotland county, Missouri bonds, issued to the Missouri, Iowa and Nebraska Railroad Company, of the denomination of $1,000 each, to the amount of sixty-one thousand dollars ($61,000).
376 The bonds were numbers 10, 11, 12, 88, 153, 154, 155, 156, 157, 33, 34, 32, 85, 138, 139, 140, 141, 142, 56, 57, 93, 178, 179, 16, 17, 18, 63, 64, 65, 66, 67, 68, 69, 70, 55, 81, 82, 187, 188, 189, 190, 97, 98, 29, 30, 31, 173, 174, 175, 176, 177, 92, 4, 5, 6, 90, 163, 164, 165, 166, and 167. These purchases were made at different times from about the middle of November, 1875, to the latter part of October, 1876, from sundry persons and at the ruling market prices.

In answer to interrogatory 4th: We sold all of the bonds described to the First National Bank, of Warsaw, Illinois, at or about fifty per cent.

In answer to interrogatory 5th: At the time of purchasing said bonds I had never heard, and I do not believe that any one connected with our firm had ever heard, that Levi J. Wagner and other taxpayers of Scotland county had brought any suit. I never heard of this or any other suit pending for the purpose of declaring said bonds void. In fact, I never heard of any suit pending in the matter.

In answer to interrogatory 6th: I did not.

In answer to interrogatory 7th: S. H. Tobey and E. C. Kirk.

Answers to Cross-Interrogatories.

In answer to cross-interrogatory 1st: In the capacity as bond and stock brokers and dealers my firm, of S. H. Tobey & Co., purchased and sold during the latter part of the year 1875, and up to about November, 1876, some sixty-one thousand dollars ($61,000) Scotland county, Missouri, 8 per cent. bonds with 1873 and subsequent coupons attached; the numbers of these bonds I have set forth in my answer to interrogatory 3d. These bonds were all purchased flat
377 for cash, at and through our office in this city, from divers persons. Neither myself nor my firm now own any of said bonds. The inducement to purchase them was that we hoped to receive more for them than we paid.

In answer to cross-interrogatory 2d: My firm sold the bonds in Warsaw, Illinois, between November 1st, 1875, and November 1st, 1876, by mail and telegraph, to the First National Bank of Warsaw for about fifty cents on the dollar cash on the delivery of the bonds. The numbers and amount of said bonds were as set forth in my answer to interrogatory 3d. I have no recollection of anything that

was said or who was present when any of the sales were made; deliveries of the bonds were made through banks here.

In answer to cross-interrogatory 3d: I have no interest whatever.

In answer to cross-interrogatory 4th: I have a slight acquaintance with the plaintiff; I have never made any arrangement with him or his agents.

In answer to cross-interrogatory 5th: No.

In answer to cross-interrogatory 6th: No.

In answer to cross-interrogatory 7th: No.

In answer to cross-interrogatory 8th: No.

In answer to cross-interrogatory 9th: I had no knowledge of any such suit.

In answer to cross-interrogatory 10th: I do not.

378 In answer to cross-interrogatory 11th: I had no information on the subject.

In answer to cross-interrogatory 12th: I never was so advised.

In answer to cross-interrogatory 13th: Not to my recollection.

In answer to cross-interrogatory 14th: No.

In answer to cross-interrogatory 15th: Never.

In answer to cross-interrogatory 16th: Not to my knowledge.

In answer to cross-interrogatory 17th: I have no knowledge or information on the subject.

In answer to cross-interrogatory 18th: I do not know.

In answer to cross-interrogatory 19th: I do not.

EDWARD C. KIRK.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

EDWIN F. COREY,
Commissioner.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, } ss:

I, Edwin F. Corey, the commissioner named in the annexed commission, issued out of the clerk's office of the circuit court of the United States for the eastern district of Missouri, do hereby certify that in pursuance of said commission and of the interrogato-

379 ries and cross-interrogatories thereto annexed, came before me at my office, No. 54 Wall street, in the city, county, and State of New York, Edward C. Kirk, who was by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in controversy aforesaid and in answer to the several interrogatories and cross-interrogatories propounded to him; that he was examined upon said interrogatories and cross-interrogatories and his deposition reduced to writing by me, and subscribed and sworn to by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

I further certify that said Edward C. Kirk is a resident of the city, county, and State of New York.

Given at said city, county, and State of New York this 19th day of September, A. D. 1885.

EDWIN F. COREY, [SEAL.]
Commissioner.

The COURT: It may be here stated the general proposition of law, which counsel understand as well as the court, that these bonds were sent abroad on the market. If they were fraudulently issued and a man took them with the knowledge thereof, of course he cannot recover; secondly, if there was a suit determining their fraudulent character and they had actual knowledge of that, it affects this case very seriously; hence the object of tracing the thing through to see whether the party had knowledge, to see whether the holder is a *bona fide* holder or not.

The deposition of J. F. Secor was then read.

The deposition of James F. Secor is in the words and fig-
380 ures following, to wit:

Deposition of James F. Secor.

Interrogatories.

Interrogatories to be administered to James F. Secor, of the city of New York, State of New York, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named, in a certain cause pending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and The County of Scotland, in the State of Missouri, is defendant, on the part of said plaintiff.

1st. What is your name, age, residence, and occupation?

2nd. Were you ever a member of the firm of Zeno, Secor & Co.? If so, give the names of the other members of the firm and state whether they are now living.

3rd. Were you or said firm, while you were a member of it, ever the owner of any bonds dated September 1st, 1870, issued by Scotland county, Missouri, to the Missouri, Iowa and Nebraska Railway Company of the denomination of one thousand dollars each? If your answer to this interrogatory is affirmative then state how many bonds you or said firm owned, the numbers thereof, when they were purchased, the purchase price thereof, what coupons were attached to them, whether you or said firm have disposed of said bonds and coupons; and if disposed of, state to whom, where the purchasers reside, and what you received for them. If any coupons have been sued on, state circumstances, placing them in suit and the numbers of the coupons and bonds from which detached.

381 4th. At the time of purchasing said bonds, if you say you did purchase some of them, did you know or had you ever heard that Levi J. Wagner and other tax-payers of Scotland county

had brought suit in the circuit court of Scotland county or elsewhere against the justices of Scotland county, the treasurer of said county, the Missouri, Iowa and Nebraska Railway Company, and Charles Mety or either of them, the object and purpose of which was to enjoin Mety from delivering the bonds to the railroad company, and to have them declared void and cancelled for want of authority in the county to subscribe to the stock of said railroad company or for any other purpose?

5th. At the time of purchasing said bonds, if you say you did purchase some of them, did you know or have any reason to know that said bonds or any of them were illegally or fraudulently issued?

6th. State what opportunity you had to know whether your partners or either of them knew or had heard of the suit mentioned in the fourth interrogatory herein propounded and whether either of them, to your knowledge, knew or had heard of such suit.

BAKER & HUGHES AND
JOHN H. OVERALL,
Att'ys for Pl'ff.

A copy.
Attest: A. P. SELBY, *Clerk.*

382 *Cross-Interrogatories.*

In the Circuit Court of the United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff, *vs.* THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.	Nos. 1153 and 1287. Consolidated.

Cross-interrogatories to be administered to James F. Secor, of the city of New York, county of ——, State of New York, a witness to be produced, sworn, and examined under and by the virtue of the annexed commission, before Edwin F. Corey, the commissioner therein named, in a certain cause depending in the circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and The County of Scotland, in the State of Missouri, is defendant, on the part of said defendant.

Cross-interrogatory No. 1. State whether or not you ever owned either of the bonds or coupons described in the above-entitled suit, viz: Bonds each for the sum of one thousand dollars, numbered from 1 to 200, inclusive, with interest coupons annexed, purporting to have been made by the county of Scotland, in the State of Missouri, to the Missouri, Iowa and Nebraska Railway Company, dated September 1st, 1870, countersigned and delivered September 20 and December 11, 1871, payable twenty-five years thereafter, with interest thereon at the rate of eight per cent. per annum, or either of the coupons originally annexed thereto, each for the sum of eighty dollars; if so, designate the numbers and amount of such bonds or cou-

pons you may have owned or held; state when, where, from whom, and for what consideration you received same and whether
383 or not you still own same and what induced you to become a holder thereof.

Cross-interrogatory 2. If, having owned either of the aforesaid bonds or coupons, you ever sold the same; state where, when, how, to whom, and for what consideration you sold same, the numbers of bonds or coupons and amount thus sold, and what was said by those concerned in said transaction, and who was present at such sale, if any was made.

Cross-interrogatory 3. State whether or not you are in anywise a party in interest to the prosecution of the above-entitled cause; if so, state the nature of your interest, whether you have employed counsel or authorized the employment of counsel therein, or are to receive any benefit therefrom; if so, what benefit.

Cross-interrogatory 4. State whether or not you know the plaintiff or have ever made any arrangement with him or his agents for the prosecution of this action; if so, describe same, stating when, where, and how such arrangement was made.

Cross-interrogatory 5. Have you written or received or signed any letters or papers, bonds or contracts, concerning aforesaid suit, or concerning the bonds or coupons therein described or sued on? If so, file copies thereof; if lost, state how, when, and where the loss occurred, and state contents of lost paper.

Cross-interrogatory 6. If you now own or hold, or ever did own or hold, either of the bonds or coupons described in the second interrogatory, state whether or not when you became the owner or holder thereof you had been informed of or had inspected any record of the county court of Scotland county, in the State of
384 Missouri, touching or concerning any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company, or touching or concerning the issue or delivery of either of said bonds or coupons described in the second interrogatory; if so, state the time you received said information and the name of the person who informed you, and all you know about said orders—their dates, and contents.

Cross-interrogatory 7. State whether or not at the time you became the owner or holder of either of said bonds or coupons described in the second interrogatory you knew that either of said bonds had been issued or delivered by certain persons purporting to act as president or presiding justice and clerk of the county court of Scotland county to aid in the construction of any railroad, or to pay for stock in any company organized under the general corporation law or general railroad law of the State of Missouri, adopted in Revised Statutes of Missouri of 1864; if so, designate the name of such corporation and state all the facts connected therewith of which you then had knowledge.

Cross-interrogatory 8. If you hold or ever held either of the bonds or coupons described in the second interrogatory, state whether or not at the time you became holder of said bonds or coupons or either of same you had in any manner been informed of the fact

that any suit was pending concerning same, or any application for injunction had been made, or that a restraining order by the circuit court of Scotland county had been granted restraining Charles Mety from delivering said bonds to the Missouri, Iowa and Nebraska Railway Company, its officers or agents, or to any other person or corporation, or that any order of any State court had been made concerning same; if so, state when, where, how, and from
385 whom you received such information, and the nature of such information, answering each of said subdivisions of the question.

Cross-interrogatory 9. State whether or not you ever heard or in any manner know of the pendency of a certain suit instituted by Levi J. Wagner and others against the Missouri, Iowa and Nebraska Railway Company and the county court, county judges, and county treasurer of Scotland county, in the State of Missouri, on or about the 11th day of September, 1871, in the circuit court of Scotland county, Mo., and thence carried by change of venue to the circuit court of Shelby county, Mo., in which suit was ultimately rendered a decree that each of the 200 bonds and coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company should be delivered up and canceled; if so, state how, when, and where you learned of the institution or pendency of said suit.

Cross-interrogatory 10. State whether or not you know of any fact showing or tending to show that either William Hill, Henry Hill, Osman C. Du Sonchet, Thomas B. Hill, George S. Knox, Emily Knox, James B. Dodge, Charles H. Mellen, John Walker, Edward Manning, F. M. Drake, Benjamin S. Smith, James Fitzhenry, F. T. Hughes, A. J. Baker, Zeno Secor, Wm. H. Gebhardt, John K. Findlay, Samuel A. Gaylord, James B. Dean, N. B. Stone, James Flagerty, James Tobey, or Toby & Co., or any other individual or corporate body who ever received, held, or owned either of the two hundred bonds or annexed coupons purporting to have been issued by Scotland county to the Missouri, Iowa and Nebraska Railway Company had at any time actual notice of the pendency of a certain suit instituted by Levi J. Wagner and others against
386 Charles Mety, the Missouri, Iowa and Nebraska Railway Company, and the county court and county treasurer of Scotland county, in the State of Missouri, on the 11th day of September, A. D. 1871, in the circuit court of Scotland county aforesaid, and thence carried by change of venue to the circuit court of Shelby county, in the State of Missouri, wherein a decree was ultimately made that each of the aforesaid two hundred bonds and all coupons thereto pertaining were null and void and should be delivered up for cancellation and the county court of Scotland county enjoined from paying same; if so, state separately, with great care and elaboration, the name or names of each of said persons; all the circumstances known to you affecting each of them, with actual notice of the pendency of said suit; the number of any bond or coupon which he took or received with such actual notice; the name of the individual or corporate body from whom same was received;

the consideration, if any, given therefor; the time and place of such transaction, and any other facts which you may know and deem pertinent in response to this interrogatory.

Cross-interrogatory 11. State whether or not you were ever advised or informed that said Missouri, Iowa and Nebraska Railway Company or the Iowa Railway Contracting Company or any individual or corporation executed any indemnifying bond or bonds to Charles Mety in order to secure the delivery of said bonds or coupons described in the second interrogatory or either of same; if so, fully describe said bond or bonds; state when, how, where, and from whom you received said information, and also whether you joined in the execution of such bond or bonds or authorized the execution thereof or either of same.

387 Cross-interrogatory 12. State whether or not you were ever advised or informed that the bonds or coupons in the second interrogatory described (or either of same) were executed and delivered without any election having been previously ordered or held in said county of Scotland, in the State of Missouri, for the purpose of obtaining the sanction either of the tax-payers of said county or of the resident voters of said county or of two-thirds of the qualified voters of said county to any subscription of stock to the Missouri, Iowa and Nebraska Railway Company or any issue of bonds in payment of subscription of said stock; if so, state when, how, where, and from whom you obtained said information.

Cross-interrogatory 13. State whether or not, before becoming the holder of either or all of said bonds or coupons in the second interrogatory described, you consulted or conversed with any person concerning the said bonds or coupons; if so, state all the facts connected with such conversation.

Cross-interrogatory 14. State whether or not at any time you have ever, directly or indirectly, offered or paid or caused to be offered or paid or known to have been offered or paid to any authorized officer, agent, or other person acting for or in anywise representing said county of Scotland, in the State of Missouri, any money or other valuable consideration in order to induce such authorized officer, agent, or other person to violate any obligation upon him imposed or to betray any trust to him confided touching or concerning the alleged subscription of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or the alleged issue or delivering either or all of the bonds or coupons described in the second interrogatory or any litigation arising

388 out of said transaction; if so, state with great accuracy and fullness of detail all the facts within your knowledge as to how, when, where, or why any such peculiar or covenous transaction occurred.

Cross-interrogatory 15. State whether or not you ever have been or now are connected with or interested in a corporation styled the Missouri, Iowa and Nebraska Railway Company or a corporation or association styled Iowa Railroad Contracting Company; if so, detail the date, duration, and nature of such connection or association.

Cross-interrogatory 16. State whether or not the aforesaid Mis-

souri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company ever held or now hold any interest in the bonds or coupons involved in this suit and described in the second interrogatory; if so, state the numbers of said bonds or coupons, the manner in which they were acquired, and when, how, and in what manner and upon what conditions and for what, if any, consideration they left the control of said companies or corporations, or either of same, and to whom they were delivered.

Cross-interrogatory 17. State whether or not either the Missouri, Iowa and Nebraska Railway Company or the Iowa Railroad or Railway Contracting Company is interested in any manner in the event of this suit; if so, describe accurately the nature of such interest, and if such interest is described in writing file here-
389 with a copy of such writing, or if such writing be lost describe the circumstances attending such loss, and detail contents of such writing.

Cross-interrogatory 18. State whether or not you know of any permanent route adopted by the railroad company designated as the Alexandria and Nebraska City Railroad Company prior to 1870; if so, carefully describe said route; if you have any written or printed matter relating to the adoption of such route file same as an exhibit herein; if not under your control describe contents of such matter.

Cross-interrogatory 19. State whether or not you know of any consolidation made between the company designated as the Alexandria and Nebraska Railroad Company and any railway company of Iowa prior to the year 1870; if so, describe same; and if you have under your control any written or printed evidence of such consolidation produce same and file it as an exhibit herein.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

A copy.
Attest: A. P. SELBY, *Clerk.*

390 *Commission.*

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

The President of the United States of America to Edwin F. Corey, of New York city, New York, Greeting:

Know ye that we, in confidence of your prudence and fidelity, do by these presents authorize you to cause to come before you to be examined as witnesses in a cause pending in our circuit court of the United States for the eastern district of Missouri, wherein William Hill is plaintiff and Scotland County is defendant, all and every such person named in the interrogatories her-to attached, and at such time and place as shall be named by you for that purpose; and we command you to examine all and every such person, upon his oath or solemn affirmation first made or taken before you to testify the whole truth touching his knowledge of anything relating to the said matter in controversy between the said parties,

and that you do take such his examination and reduce the same into writing. When you shall have so taken his examination you are to cause the witness to sign the same, and to that and each examination, at the foot thereof, you are to append your certificate, setting forth the facts that the examination was subscribed and sworn to or affirmed by the witness, and the day, as well as between what hours of the day, on which it was done, as also the place of residence of the witness, if known to you. Should any paper or exhibit be produced or proven or referred to by the witness you are to describe the same in his examination, or cause it to be so marked by him as to establish its identity, and attach the same to his examination, and you will return the same and all exhibits produced to you annexed hereto, carefully closed up and under your seal, directed to the clerk of the circuit court of the United States for the eastern district of Missouri, with the names of the said parties litigant endorsed thereon, with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 8th day of September, A. D. eighteen hundred and eighty-five.

Issued at office, in the city of St. Louis, in said district, under the seal of said court, the day and year last aforesaid.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Commission to Edwin F. Corey, No. 54 Wall St., New York city, to take depositions on the part of the plaintiff in the above-entitled case. Returned and filed the — day of ——, 188–. ——.——, clerk.

391 The deposition of James F. Secor, a witness produced, sworn, and examined on the twenty-third day of September, A. D. 1885, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the office of Edwin F. Corey, No. 54 Wall street, in the city, county, and State of New York, pursuant to the annexed commission and interrogatories and cross-interrogatories thereto annexed, before me, Edwin F. Corey, the commissioner in said commission named, in a certain cause now depending in the circuit court of the United States for the eastern district of Missouri between William Hill, plaintiff, and Scotland County, defendant, on the part of the plaintiff.

Answers to Interrogatories.

The said JAMES F. SECOR, of lawful age, being by me duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth touching his knowledge of anything relating to said matter in controversy between the said parties, and being examined upon the interrogatories and cross-interrogatories to him propounded and hereto annexed, did depose and say:

In answer to interrogatory 1st: James F. Secor; 69 years of age; I reside at 718 Madison Ave., New York; I am not engaged in active business.

In answer to interrogatory 2nd: I was a member of that firm composed of Zeno Secor and Charles Secor with myself; both the former are now dead.

In answer to interrogatory 3d: We did own some of those bonds; we — nine of them, of $1,000 each, numbered 7, 8, 9, 99, 191, 192, 193, 194, and 195; they were purchased during the year 1871
392 at about 50 cents on the dollar; all unmatured coupons were attached to each of said bonds; we have disposed of all said bonds and coupons to the 1st National Bank of Warsaw, Illinois, for twelve thousand dollars; in July, 1877, we sent out matured coupons Nos. 3, 4, 5, and 6 off of each bond to collect as they did their own coupons, and I understood they were sued upon.

In answer to interrogatory 4th: Never heard anything of it.

In answer to interrogatory 5th: I had not.

In answer to interrogatory 6th: I had every opportunity of obtaining that or any other information connected with our business affairs, and I do not believe that either of my partners ever knew or heard of any such suit; had they known or heard of it I most certainly would have heard of it also.

Answers to Cross-Interrogatories.

In answer to cross-interrogatory 1st: My firm did own nine of the bonds; they were numbered 7, 8, 9, 99, 191, 192, 193, 194, and 195, amounting to nine thousand dollars; we purchased them during the year 1871; I don't remember in what month nor from whom, but they were purchased in New York, and we paid fifty cents on the dollar for them; we do not own the bonds or any of them now; we purchased them for the purpose of selling them again at an advanced price.

In answer to cross-interrogatory 2nd: We sold all of the nine bonds to the 1st National Bank at Warsaw, Illinois; I do not remember the date of sale; we received $12,000 in cash for
393 them; they were the same nine bonds above described; I don't remember of anything that was or who might have been present.

In answer to cross-interrogatory 3d: I am not interested in any manner.

In answer to cross-interrogatory 4th: I do know the plaintiff, but never made any arrangement with either him or his agents regarding this suit.

In answer to cross-interrogatory 5th: I have not.

In answer to cross-interrogatory 6th: I never received any such information, nor did I ever inspect any record.

In answer to cross-interrogatory 7th: I did not.

In answer to cross-interrogatory 8th: I never received any such information.

In answer to cross-interrogatory 9th: I never heard or knew of the pendency of any such suit.

In answer to cross-interrogatory 10th; I do not know of any such fact.

In answer to cross-interrogatory 11th: I was never so advised or informed.

In answer to cross-interrogatory 12th: I was never so advised or informed.

In answer to cross-interrogatory 13th: I had no conversation with any one that I now remember.

In answer to cross-interrogatory 14th: I have never offered or paid or caused to be offered or paid or known to have been offered or paid to any one any money or consideration of any kind for the purposes named.

394 In answer to cross-interrogatory 15th: I never have been and am not now connected with either company in any manner.

In answer to cross-interrogatory 16th: I do not know.

In answer to cross-interrogatory 17th: I do not know.

In answer to cross-interrogatory 18th: I do not know.

In answer to cross-interrogatory 19th: I do not know.

JAMES F. SECOR.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

EDWIN F. COREY,
Commissioner.

UNITED STATES OF AMERICA, }
State of New York, City and County of New York, } *ss:*

I, Edwin F. Corey, the commissioner named in the annexed commission issued out of the clerk's office of the circuit court of the United States for the eastern district of Missouri, do hereby certify that in pursuance of said commission and the interrogatories and cross-interrogatories thereto annexed came before me at my office, No. 54 Wall street, in the city, county, and State of New York, James F. Secor, who was by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in controversy aforesaid and in answer to the several interroga-

395 tories and cross-interrogatories propounded to him; that he was examined upon said interrogatories and cross-interrogatories and his deposition reduced to writing by me and subscribed and sworn to by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

I further certify that said James F. Secor is a resident of the city, county, and State of New York.

Given at said city, county, and State of New York this 23rd day of September, 1885.

EDWIN F. COREY, [SEAL.]
Commissioner.

S. A. Gaylord.

Plaintiff then called as a witness S. A. GAYLORD, who, being duly sworn, testified as follows:

By Mr. OVERALL:

Q. Where do you reside?
A. 3428 Chestnut street, St. Louis.
Q. What business are you engaged in?
A. The brokerage business.
Q. How long have you resided in St. Louis?
A. Since 1849.
Q. Were you ever the owner of any of the bonds of Scotland county issued by that county to the Missouri, Iowa & Nebraska Railroad Company, of the denomination of $1,000 each, bearing interest at the rate of 8 per cent. per annum?
396 A. What is the first question?
Q. Whether you ever purchased any bonds issued by Scotland county to the Missouri, Iowa and Nebraska Railroad Company, of the denomination of $1,000 each, bearing 8 per cent. per annum, payable annually.
A. I did.
Q. Can you state the numbers of the bonds you purchased?
A. Nos. 35, 36, 37, 84, 133, 134, 135, 136, 137.
Q. At what time did you buy those bonds?
A. August 19th, 1875.
Q. What coupons were attached to those bonds?
A. I can't say positively; I think December, 1872.
Q. Are you certain of that?
A. I can't say positively.
Q. Were all the coupons that matured after the time you purchased attached to them?
A. All unpaid coupons were attached, I believe.
Q. What did you give for those bonds?
A. I paid 40 cents.
Q. What did you do with those bonds?
A. I sold them to J. B Dodge, cashier at Warsaw, Illinois.
Q. How much did you sell them for?
A. 50 cents.
Q. Now, at the time you purchased those bonds, had you ever heard that Levi J. Wagner and other tax-payers of Scotland county had brought suit in the circuit court of Scotland county or elsewhere against the justices of the county court of Scotland county, the treasurer of said county, the Missouri, Iowa and Nebraska Railway Co., and Charles Mety or either of them, the object and purpose of which was to enjoin Mety from delivering the bonds to the railroad company and to have them declared void and cancelled for want of authority of the county to subscribe to the stock of said rail-
397 road company and for any other purpose?
A. I never did.

Q. At the time of the purchase of those bonds did you know or have any reason to know that those bonds were illegally or fraudulently issued?

A. I had not.

Cross-Examination.

Cross-examination by Mr. CUNNINGHAM:

Q. Of what bank was Mr. Dodge cashier at that time?

A. I think the First National Bank of Warsaw, Illinois.

Q. What is his first name?

A. I don't know; J. B. Dodge is the way he signs it, I believe.

Q. Is he still cashier of that bank?

A. I can't say.

Q. Do you know who was president of that bank at that time?

A. William Hill.

Q. You paid 40 cents flat?

A. 40 cents flat.

Q. How many coupons past due were there on the bonds at that time?

A. Well, in 1875 there ought to have been all three years.

Q. It was about 24 per cent. with interest on it; three years' interest at 8 per cent., with interest on interest?

A. I think the first coupon was a fractional one, not a full coupon.

Q. How could it be fractional?

A. It was due after the date of the bond.

Q. There never had been any coupons paid on it at all?

A. Not that I am aware of.

Q. Then, as I understand, the rule requiring brokers in estimating that thing is when you buy bonds flat it means you buy at 40 cents for the amount of the bond, the face of the bond, and the interest is thrown in?

A. Yes.

398 Q. So you paid about 15 cents for the principal of that bond?

A. I paid 40 cents flat?

Q. That would be 12 to 15 cents for the principal for $120,000. Did you ever sell those men any other bonds besides those?

A. Not that I am aware of.

Q. Have you in your possession any letters they wrote you touching this matter?

A. I have.

Q. Will you produce them?

(Witness produces certain letters.)

Q. Are those the only two that you have?

A. I have others here.

(Other letters were produced.)

Mr. CUNNINGHAM: I don't think it is worth while to encumber the record with them. Some relate to the purchase of these bonds, but

there is nothing disclosed beyond that, and I don't care to have them put in.

Mr. OVERALL: We don't wish to ask anything further.

The COURT (to the witness): Those bonds your have spoken of were bought in the open market without any notice, only what was on the face of them, were they?

A. Without any notice.

Q. You sold them accordingly?

A. Yes, sir.

Mr. OVERALL: We now introduce in evidence bonds 101, 102, 103, 104, 105, 106 in the package we have produced here.

Plaintiff next called as witness CHARLES H. MELLEN, who, being duly sworn, testified as follows:

By Mr. OVERALL:

Q. Where do you reside?

A. Keokuk, Iowa.

399 Q. What is your full name?

A. Charles H. Mellen.

Q. How long have you resided in Keokuk?

A. Since 1876.

Q. Did you ever own any of the bonds numbered 101, 102, 103, 104, 105, and 106 of Scotland county, Missouri, issued to the Missouri, Iowa and Nebraska Railroad Company, of the denomination of $1,000 each, bearing 8 per cent. interest, payable annually?

A. I have a memorandum of them. (Examines memorandum.) Yes, sir; I own them now; 101, 102, 103, 104, 105, and 106.

Q. Where did you get those bonds?

A. I bought them of the First National Bank of Warsaw.

Q. How much did you give for them?

A. I bought—the first five bonds I paid 65 cents for and interest, amounting to $3,448.88, and about a month afterwards, or two or three months after, I bought 106 and paid $600 for that. The first five were bought June 17th, 1872, and 106 I bought January 19th, 1873.

Mr. CUNNINGHAM: When did you buy the first lot?

A. June 17, 1872.

Q. You are still the owner of these bonds, 101, 102, 103, 104, 105, and 106?

A. Yes, sir.

Q. Did you ever deliver the coupons from those bonds to Mr. Hill for collection?

A. Yes, sir.

Q. And he brought the suit of Hill against Scotland County—the present suit?

A. Yes, sir.

Q. Under your instructions?

A. Yes, sir.

Q. Now, at the time of purchasing those bonds, had you ever

heard that Levi J. Wagner and other tax-payers of Scotland county had brought suit in the circuit court of Scotland county or elsewhere against the justices of the county court of Scotland county and the treasurer of said county and the Missouri, Iowa and Nebraska Railway company and Charles Mety or either of them,
400 the object and purpose of which was to enjoin Mety from delivering the bonds to the railroad company and to have them declared void and cancelled for want of authority of the county to subscribe to the stock of said railroad company or for any other purpose?

A. No, sir; I never did.

Q. At the time of purchasing those bonds did you know or have any reason to know that the bonds were illegally or fraudulently issued?

A. I had not, sir.

Q. Did you know any of the facts other than the facts recited on the face of the bonds?

A. None whatever.

Q. You bought them on those recitals?

A. Yes, sir.

Cross-Examination.

Cross-examination by Mr. CUNNINGHAM:

Q. Mr. Mellen, you spoke of buying two lots of bonds; I understood you to say you bought the first lot in the month of June, 1872?

A. I bought the first five on June 17th, 1872.

Q. Do you own either of those bonds which you then bought?

A. I own them all now.

Q. Which—those you bought in 1872?

A. Yes, sir.

Q. And when did you buy the last lot?

A. The last lot, the one mentioned here, 106, I bought January 19, 1873.

Q. Have you any other coupons in those — besides those mentioned?

A. I have some other bonds I bought since.

Q. In any suit of William Hill, I mean.

A. I don't think I have.

Q. You testified some years ago in a deposition taken in this case at Keokuk by Mr. Hagerman?

A. Yes, sir.

Q. Didn't you testify then you had sold those first bonds?
401 A. No, sir; I did not, and you can't find anything of the kind.

Q. You said you had bought some in 1876, didn't you?

A. I bought some in 1878.

Q. And they were 16, 17, 39, 40, and 56, were they not?

Mr. OVERALL: I object, because those bonds are not in this suit.

Mr. CUNNINGHAM: How can we tell what is in the suit? They

have dismissed $20,000 of coupons while we are trying the case, and we haven't had time to find what they have dismissed and what they have not.

Mr. OVERALL: We have furnished a list, put in the hands of one of the jurymen, showing exactly the coupons and bonds in suit.

Mr. CUNNINGHAM: I spent four hours last night trying to locate these coupons that were dismissed yesterday, and it is not just to us to compel us to take their knowledge in the matter.

Mr. OVERALL: We did not take judgment on those.

Mr. CUNNINGHAM: Those coupons were in this suit at one time.

The COURT: They have all been dismissed, the counsel says.

Mr. CUNNINGHAM: I don't know it; they say so.

The COURT: Hold them to their word; of course we will hold them to their statement.

Mr. OVERALL: Those are not in this suit of William Hill against Scotland County.

Q. What did you pay for those bonds?

A. I paid $3,448.88.

Q. What per cent. was that on the principal?

A. I think 65 cents and interest.

402 Q. That is for the first lot or the last?

A. The first lot and the 106 I paid $600 for.

Q. Did you never authorize William Hill to buy any bonds for you?

A. No, sir.

Q. You made this transaction direct with the First National Bank?

A. Yes, sir.

Q. Did you ever examine the records of Scotland county?

A. No, sir.

Q. Did you ever have a conversation with any one on board a steamboat called the Cow Boy, running from Keokuk to Warsaw, about the litigation of Scotland county?

A. I did not.

Q. Was there a steamboat of that name?

A. Yes, sir.

Q. You used to ride up and down there sometimes?

A. Yes, sir.

Q. Did you ride up and down on that boat during the spring of 1872?

A. That boat was not in existence until 1878.

Q. Well, what was the name of the boat that run prior to that time; can you recall the name of the boat prior to that time?

A. I think it was the Eagle.

Q. Did you converse with any one on board the Eagle about that litigation?

A. I don't remember.

Q. You speak about a conversation in your deposition here with William Hill when you purchased the bonds; do you remember of

any conversation you had with William Hill concerning the purchase of the bonds?

A. I never had any particular conversation about it, more than a man would naturally have on a trade of bonds.

Q. Didn't you state in your deposition taken some years ago that you bought some bonds of Mr. Hill?

A. I said William Hill, as president of the First National Bank.

403 Q. Mr. Hill has been president of the First Natinal Bank how long?

A. Since its existence.

Q. When was it organized?

A. In 1865, I think.

Q. How long has Dodge been cashier of that bank?

A. Since 1869.

Q. Was he occupying any other office in that bank prior to cashiership?

A. No, sir; didn't reside there.

Q. Who was cashier prior to that?

A. I was myself.

Q. You were cashier at that time, from 1869 back?

A. I was cashier from the existence of the bank to 1869.

Q. Were you a stockholder in the Missouri, Iowa and Nebraska Railway Contracting Company?

A. I was not.

Q. Were you a stockholder in the Missouri, Iowa and Nebraska Railroad Company?

A. I was not.

Q. Have you purchased any other interest in this suit besides that named since the institution of the suit?

A. Have I what?

Q. Have you purchased any other interest in the coupons of this suit besides that named; have you any other interest in this suit?

A. I have more bonds than I had.

Q. What bonds have you in this suit now?

A. I don't know that I have any in this suit.

Q. Please give the numbers and year.

A. Do you want to know what the bonds are in addition to those given?

Q. Yes.

A. 16, 17, 18, 39, 40, 56.

—. These are the ones you bought in 1878?

A. Yes, sir.

Q. You have bought nothing since 1878?

A. No, sir.

404 *Wm. Hill.*

WM. HILL, sworn and examined, testified as follows:

Mr. OVERALL: I will explain the object of introducing this witness. It may be that the stenographer or somebody in writing down

one of the numbers in the deposition of Kirk gave the number as 55, whereas it ought to have been 75.

By Mr. OVERALL:

Q. Mr. Hill, you are the plaintiff in this case?
A. Yes, sir.
Q. Where do you reside?
A. Warsaw.
Q. How long have you resided there?
A. Since 1856.
Q. What business are you engaged in?
A. The banking business.
Q. What bank?
A. The First National Bank of Warsaw.
Q. What position do you hold in that bank?
A. I hold the presidency of it.
Q. How long have you been president of that bank?
A. Since its organization.
Q. In 1865?
A. 1864.
Q. State whether you purchased of S. H. Toby & Co., of New York, any bonds issued by Scotland county, payable to the Missouri, Iowa & Nebraska Railroad Company.
A. Yes, sir; I did.
Q. State whether you purchased bond 55. You have no 55 on your list, I believe; I only wish to correct an error in the list of numbers given.

JUROR: I have no 55 on my list.

Mr. OVERALL: It is in the other suit and not this suit; I wish to correct that error.

WITNESS: No, sir; I have no 55.

Mr. OVERALL: I suppose the gentleman will admit that No. 75 is the one that is intended.

405 Q. Now, did you buy of Mr. Toby bond 75?
A. Yes, sir.
Q. And did not buy 55?
A. No; I bought 75, March 8th, 1876.
Q. Do you know how many bonds you ever bought in all of Toby & Co.?
A. Yes, sir; 61.
Q. Of $1,000 each?
A. Yes, sir.
Q. And you did buy bond 75 and not bond 55?
A. Yes, sir.
Q. Do you know the numbers of the bonds still remaining in this suit; have you checked them over?
A. I have checked them over, but I don't remember them now.
Q. You have checked them all over?
A. Yes, sir.

Q. State what you know in regard to detached coupons, filed in this and now remaining unpaid from the bonds.

A. Well, all except those sent for collection—that is, the Secor, Gebhart and Stone—they were sent for collection; I did not detach them; but all the rest were either detached by me or in my presence in the office of the bank.

Q. Then the Secor, Gebhart, and Stone coupons were sent to you, and are they the same ones mentioned in the depositions of those witnesses?

A. Yes, sir.

Q. The same coupons?

A. Yes, sir.

Q. The others you detached or had detached in your presence at the bank?

A. Yes, sir.

Cross-examination declined.

Mr. OVERALL: We desire to introduce the original answer in this case, which admits the execution of the instrument sued on.

Mr. KRUM: We object as incompetent.

The COURT: It has already been proved in this case; what difference does it make?

406 Mr. OVERALL: We will not introduce it.

This was all the evidence offered by plaintiff in chief.

Mr. CUNNINGHAM: I suppose your honor proposes we shall offer our defense in the Hill case before you enter upon another?

The COURT: Is it common to all the cases?

Mr. CUNNINGHAM: I do not like to discuss what has been passed upon by the court, but I think a few minutes' discussion of that thing will satisfy your honor that these cases cannot be tried together; they involve different parties and suits.

The COURT: Merely as to the question of notice.

Mr. CUNNINGHAM: A great many other questions. We want a separate jury and a separate trial, but I understand your honor desires I shall open for the defense.

The COURT: Yes.

The counsel then made his opening statement.

After it he said:

I will offer that first mortgage and the acceptance of it.

Said mortgage is in the words and figures following, to wit:

First Mortgage.

This indenture, made and entered into this first day of June, in the year of our Lord one thousand eight hundred and seventy, by and between the Missouri, Iowa and Nebraska Railway Company, a corporation duly incorporated, organized, and existing under and by virtue of the laws of the States of Missouri and Iowa, party of the

first part, and the Farmers' Loan and Trust Company, of the
407 city of New York, trustees for certain creditors, holders, and owners of the bonds of said railway company, party of the second part, witnesseth: That whereas the said party of the first part owns and possesses the power, under and by virtue of the laws of the States of Missouri and Iowa, to construct, maintain, and operate a continuous line of first-class railway from the city of Alexandria, on the Mississippi river, to a point on the Missouri river, in the State of Iowa, near Nebraska City, in the State of Nebraska;

And whereas the said party of the first part has commenced the construction of said line of railway between said points and has a large portion of said line graded, with the streams and culverts bridged, and the cross-ties purchased and received along the line thereof, and ready for the laying of track thereon;

And whereas the said party of the first part, by an order and by resolutions duly passed by its board of directors at a regular and lawful meeting held at the office and principal place of business of said company in Centerville, Iowa, on the 13th day of May, A. D. 1870, has decided, for the purposes of obtaining funds to complete the said line of railway and the purchase of iron and other materials to be used therein and equipments for future motive power, rolling stock, and machinery for the said railway, to make, execute, and deliver its six thousand bonds, of and for the sum of one thousand dollars each, and bearing date June 1st, A. D. 1870, and to sell and dispose of the same and thereby become indebted to divers persons, bodies politic or corporate, who shall become the holders thereof, in the just and full sum of six million dollars, and which bonds and indebtedness shall have a priority of lien upon all
408 the corporate property, railway, and franchises of every kind and description now acquired and owned or to be hereafter acquired and owned by the party of the first part, and the payment thereof, together with the interest accruing thereon, to be secured by deed of trust in first mortgage on all the corporate property, railway, and franchises of the said party of the first part as aforesaid and as hereinafter set forth, and that a sinking fund of thirty thousand dollars annually, to provide for the payment of said bonds, shall be formed by setting apart on the first day of June, A. D. eighteen hundred and seventy-five, and each and every year thereafter on the first of June, the sum of thirty thousand dollars. This sinking fund shall be kept & invested by three commissioners, one of whom shall be the president of the company and the other two shall be members of the board of directors of said company; they shall invest the said fund in the bonds of said railway company; otherwise, at the discretion of the commissioners, in stocks of the United States, said bonds to be payable in the city of New York on the first day of June, one thousand nine hundred and ten, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually, in gold, free from United States income tax, in the city of New York, on the first days of June and December in each and every year, in accordance with the coupons to be thereunto annexed, said bonds to be numbered consecutively

from one to six thousand, both inclusive, and are to stand equally and ratably secured according to their respective amounts, without preference of one over the other, and all of which are to be in the form following, to wit:

(Endorsed on the margin are the following words:) The bonds herein mentioned will be duly stamped when issued with U. S. revenue stamps of one dollar each.

409 No. —. $1,000.

UNITED STATES OF AMERICA, *States of Missouri and Iowa.*

Missouri, Iowa and Nebraska Railway Company.

First Mortgage, Forty Year, Seven Per Cent., Gold-Bearing Sinking Fund Bond.

Know all men by these presents that the Missouri, Iowa and Nebraska Railway Company is indebted to the Farmers' Loan Company of the City of New York, or bearer, in the sum of one thousand dollars, which said company promises to pay to them, or the bearer hereof, on the first day of June, one thousand nine hundred and ten, in the city of New York, with interest thereon from the first day of June, A. D. eighteen hundred and seventy, until the said sum shall become fully due and be paid, at the rate of seven per centum per annum, payable semi-annually, in gold, free from United States income tax, in the city of New York, on the first days of June and December, in each year, on presentation and surrender of the annexed coupons as they severally become due; and in case of non-payment of any half-yearly installments of interest which shall have become due and payable and payment shall have been demanded, if such default shall continue for six months after the maturity of the said installments, the principal of this bond shall become due in the manner and with the effect specified in the deed of trust in first mortgage securing such payment.

This bond is one of an issue of six thousand bonds of like tenor, date, and amount, numbered consecutively from one to six thousand, both numbers inclusive, and amounting in the aggregate to six million dollars, and has a special first lien on all of the railroad property, equipments, and franchises of said company, and the full and final payment of which and the interest thereon is secured by deed of trust in first mortgage dated the first day of June, eighteen hundred and seventy, duly executed and recorded in the proper
410 offices in the States of Missouri and Iowa, conveying to the Farmers' Loan and Trust Company of the City of New York, in trust, all the corporate property, railway franchises of every kind and description, now acquired and owned, to be hereafter acquired and owned, by said company within the States of Missouri and Iowa, together with all and singular the equipments, appurtenances, lands, and tenements therein mentioned, — by reference thereto will more fully appear. The holders hereof will also be entitled to the benefit

and security of a sinking fund of thirty thousand dollars, provided for and described in said deed of trust, to be set apart on the first day of June, 1875, and each and every year thereafter, for investment, out of the earnings of said company, for the redemption of six million dollars secured by said deed of trust. This bond shall be transferable by delivery, or it may be registered as to its ownership on a registry to be kept by the company, and being so registered it shall then be transferable only on the books of the company until released from such registry on said books by its owner. This bond shall not become obligatory until it shall have been authenticated by certificate annexed to it, duly signed by the trustee.

In witness whereof the said railway company has caused its corporate seal to be hereunto affixed and the same to be attested by the signature of its president and secretary, and has also caused the coupons hereto annexed to be signed by its secretary on this first day of June, in the year of our Lord one thousand eight hundred and seventy.

—— ——, *President.*
—— ——, *Secretary.*

411 I hereby certify that this bond is one of the series of six thousand bonds described in and secured by the deed of trust in first mortgage above mentioned, and that said deed of trust in first mortgage securing the same has been duly executed, recorded, and delivered.

—— ——, *Trustee.*

With seventy-nine coupons for the semi-annual interest to become due thereon, substantially in the following form and differing as to the term and time of payment only, to be annexed thereto, to wit:

$35. $35.

The Missouri, Iowa and Nebraska Railway Company will pay the bearer hereof thirty-five dollars in gold in the city of New York on December 1st, 1870, being semi-annual interest on bond No. —.

C. W. POWER, *Secretary.*

Now, therefore, this indenture witnesseth: That said party of the first part, for the purpose and in order to fully secure the payment of the said sum of money mentioned in said bonds and each and every of them, with the interest thereon according to the true intent and meaning thereof, and in consideration of the premises and of one dollar paid to them by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, transfer, and confirm, unto the Farmers' Loan and Trust Company, the party of the second part, their successor or successors, in trust and for the uses hereby created, all the right, title, and interest of the party of the first part acquired in any and all manners whatsoever of, in, and to all and singular the pieces or parcels of

land situated, lying, or being in the States of Missouri and
412 Iowa now purchased and acquired or which may at any time hereafter be purchased and acquired for the railway of the said party of the first part extending from the city of Alexandria, on the Mississippi river, in the State of Missouri, through the counties of Clarke and Scotland, in said State of Missouri, and the counties of Van Buren, Davis, and Appanoose, in the State of Iowa, to the town of Centreville, in said county of Appanoose, and thence west through the said county of Appanoose and the counties of Wayne, Decatur, Ringgold, Taylor, Page, and Fremont, in the State of Iowa, to a point on the Missouri river, in the State of Iowa, near Nebraska City, in the State of Nebraska, and all and singular the railroad now surveyed and being constructed or that may be hereafter surveyed and constructed and leading from the Mississippi to the Missouri rivers and lying and being in the said States of Missouri and Iowa, together with all and singular the right of way for said road now belonging or to belong to the party of the first part, and also the right of the said party of the first — to construct and maintain along said route a railroad, as well as all other rights, privileges, and franchises belonging to said party of the first part in, upon, or pertaining to said railroad, including its road-bed made or to be made, grading, embankments, slidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron, rails, fences, stations and station-houses, depot grounds, and all the work, materials, and operations for the construction of said road now made or acquired or which may at any time be made, done, or acquired by the said party of the first part and which in anywise appertains or shall appertain to said railroad; and all and singular the buildings, machine-shops, engine-houses, depots, turn-
outs, wood and water stations, water tanks, and all other
413 buildings or structures, improvements and constructions of every nature and description now belonging to or to belong to the said party of the first part and in anywise appertaining or to appertain to said railroad, together with all and singular its alienable franchises, emoluments, income, and advantages, tenements and hereditaments, appurtenances, and all and singular the equipments or furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description now belonging to, owned, possessed, or acquired or hereafter to be owned, possessed, or acquired by the party of the first part, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to which said party of the first — may become entitled through or by reason of the construction of said railroad, and all the estate, right, title, and interests, property, possession, in law or in equity, of the said party of the first part now acquired or hereafter to be acquired, together with all and singular the rights, privileges, corporate property, and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining:

To have and to hold the said granted premises unto the said party of the second part and to their successor or successors forever;

in trust, nevertheless, and for the uses and purposes in this indenture expressed and declared: Provided always, and these presents are upon the express condition, That if the said party of the first part and its successors shall well and truly pay or cause to be paid to the holders of its said bonds so to be issued as aforesaid and each
414 and every of them the principal sums of money and the interest thereon, as therein mentioned and set forth, and shall well and truly keep, fulfill, and perform all and singular its covenants, promises, stipulations, and agreements, as therein and herein contained, according to the true intent and meaning thereof, that then and from thence these presents and estate hereby granted shall cease, determine, and be null and void, and the right to the premises hereby conveyed shall revert and revest in said party of the first part without any acknowledgment of satisfaction, reconveyance, reentry, and other act.

And this indenture further witnesseth that the premises hereby granted, bargained, and described and each and every part and parcel thereof, with the appurtenances, are granted, bargained, and conveyed unto them, the said party of the second part, and their successor or successors in the trust hereby created, upon the trust, terms, conditions, and agreements and to and for the uses, interest, and purposes following—that is to say: That the actual possession, issue, management, and control of the said railroad and premises hereby granted shall be and remain with the said party of the first part without any molestation of the said party of the second part or their successor or successors in this trust hereby created so long as its bonds shall remain without default or forfeiture and said party of the first part shall perform and keep the covenants and stipulations therein or herein contained; and the said party of the first part, for itself and its successors, doth covenant and agree to pay unto the holders of the said bonds, respectively, the said principal sums of money and interest thereon as therein mentioned and expressed; and
415 if any default should be made in the payment of said interest or any part thereof on any day whereon the same is made payable, as expressed in said bonds and the coupons thereto annexed, and should the same remain unpaid and in arrears for the space of six months, then and from thenceforth—that is to say, after the lapse of the said six months—the said principal sums named in said bonds, with all arrearages of interest thereon, shall, at the option of the holders thereof of more than one-half the amount of said bonds then outstanding, expressed in writing to the said party of the second part, their successor or successors, become and be due and payable immediately thereafter, although the period therein limited for the payment thereof may not then have expired, anything herein or therein contained to the contrary thereof in anywise notwithstanding; and if any default should be made in the payment of the principal sums named in said bonds or the interest that may grow due thereon or any part of either the said principal or interest on any day whereon the same is made payable, as therein mentioned and expressed, and should the same remain unpaid for the space of six months thereafter, or if the said party of the first part shall fail well

and truly to keep, fulfill, and perform all and singular its other covenants, promises, and stipulations therein or herein contained, according to the true intent and meaning thereof, that then and from thenceforth it shall be lawful for and shall be and become the duty of the said party of the second part, their successor or successors, in the said trust, upon the written request of the holders of more than one-half of the amount of said bonds then outstanding to enter into and upon and take possession of all and singular the said premises, property, and franchises of every nature and de-
416 scription herein granted and conveyed, and as attorneys-in-fact or agent of the said party of the first part, by themselves, their agent or agents or substitutes duly constituted, have, use, enjoy, and operate the same, making from time to time all needful repairs, alterations, and additions; and, after deducting the expenses of such use, repairs, alterations, and addition, and the costs and charges of such taking possession and a reasonable compensation for the services of said trustees, on such taking possession and while so in possession, apply the proceeds thereof to the payment of the principal and interest of said bonds issued hereunder remaining unpaid and which may have become due, and upon the written request of the holders of more than one-half of the amount of said bonds which shall then be outstanding and unpaid, and in which case default shall have been made in any manner as aforesaid, it shall be lawful and be and become the duty of the said party of the second part, their successor or successors, to sell, or cause to sell, or cause to be sold, the said premises, real and personal estate, rights, franchises, and property of every nature and description hereby granted, and all benefits and equity of redemption of the said party of the first part, its successors or assigns, therein, at public auction, in the city of Keokuk, in the State of Iowa, or in the city of New York, as the said trustees, their successor or successors, may elect, after first giving twelve weeks' notice of said sale by publishing the same in at least one daily newspaper published in the city of New York and in two daily newspapers published in the city of Keokuk; and on such sale, as the attorneys of the said party of the first part, for that purpose by these presents duly constituted and appointed, to make, execute, and deliver to the
417 purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in law for the same, in fee simple, which shall be forever a perpetual bar, both in law and equity, to the said party of the first part, its successors and assigns, and all other persons, associations, bodies corporate or politic, claiming or to claim by, from, or under them or either of them, of all rights, interests, or claims of, in, or to the said premises, rights, or franchises, or any part or parcel thereof, the amount of the bid or purchase-money of said sale may be paid and satisfied, in whole or in part, by the outstanding bonds or any of them issued hereunder, and the same shall be taken and received in whole or in part payment and satisfaction by the party of the second part, their successor or successors, according to their value, to be ascertained and determined by the net amount arising from such sale as compared with the amount of outstanding bonds issued hereunder as aforesaid; and the said

party of the second part, after deducting from the proceeds of such sale the costs, charges for advertisements, and expenses thereof of said sale and of managing said property, shall apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of said outstanding mortgage bonds issued hereunder and not used in payment of said bid and purchase as aforesaid, and shall pay over the remainder or overplus of the purchase-money, proceeds of such sale, if any there shall be, to the party of the first part, its successors or assigns, and all other persons, associations, bodies corporate or politic, claiming or to claim the premises or any part thereof by, from, or under them or any or either of them; and the said party of the first part doth
418 hereby covenant, for itself and its successors, that in no case shall it or they claim or take advantage of any stay, valuation, or appraisement laws, all benefits of which are expressly waived, or obtain — apply for any injunction or stay of proceedings or other process to prevent, postpone, or delay such entry, use, enjoyment, operation, or sale as aforesaid; and in case of any such taking possession or proceeding to sell the said mortgaged premises for default in payment of interest only, if the said party of the first part, before the said bonds shall become payable, and before such sale shall be made, shall pay and satisfy all interest then in arrears on any of said bonds, and shall also pay and discharge all costs, expenses, and disbursements, and pay all said reasonable compensation then and theretofore incurred by reason of such default; and the said trustees, upon such evidence thereof made to their satisfaction, shall thereupon discontinue such proceedings and restore possession of the said mortgaged premises to the said party of the first part, to be held subject to these presents in like manner as if said default had not happened; and the said party of the first part further covenants and agrees for itself and its successors and all and every other person or persons, associations, bodies politic or corporate, whatsoever or whomsoever, lawfully or equitably claiming or deriving any estate, right, title, or interest of, in, and to the premises hereby granted or intended so to be, or any part thereof, by, from, under, or in trust for it or them, upon the reasonable request of the said party of the second part, their successor or successors, to make, execute, do, and deliver, or cause to be made, done, execute and delivered, all and every such further and other reasonable acts,
419 conveyances, and assurances in the law, and particularly for the conveyance of all lands, depot grounds, rights of way, and such other property, including any lands that may be granted or donated to aid the construction of said railroad, or may in any manner be hereafter acquired by the party of the first part for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, their successor or successors, for the uses, interest, and purposes herein set forth and declared as by the said party of the second part, their successor or successors, or their counsels learned in the law shall be reasonably advised, devised, and required; and also that it hath not *been* made, done, committed, executed, or suffered

any act or acts, thing or things, whatsoever whereby or by means whereof the above mentioned and described premises or any part or parcel thereof now are or at any time hereafter shall or may be impeached, charged, or incumbered in any manner or way whatsoever. The said party of the first part doth hereby for itself and its successors further covenant and agree to and with the said party of the second part that the amount of bonds issued hereunder shall not exceed in the aggregate the sum of six million dollars upon the whole line of said railway from the Mississippi river to said point on the Missouri river, a distance of about three hundred miles, and that this trust and the security hereby intended shall extend to such mortgage bonds only as shall be certified and countersigned by the trustees aforesaid, their successor or successors, and that said trustees shall certify and countersign the whole or any part of said six thousand bonds at any time when requested to do so by
420 the party of the first part, the same being first signed by the president and secretary and sealed with the corporate seal of said party of the first part.

It is also especially agreed and understood that all of said bonds to be issued hereunder shall be upon an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, and none of said bonds shall be entitled to priority, and these presents and everything herein contained shall have effect and enure as a security for said bonds, equally and without preference, whether issued at one and the same time or at different times. It is also mutually agreed that the said party of the second part, their successor or successors in the trust hereby created, shall not be responsible at any time for the default or misconduct of his or their agents to be employed by him or them in his or their discretion, and shall be held bound to the exercise of ordinary and reasonable care and diligence only in the management thereof, and that the said party of the second part and their successors in the trust hereby created shall be entitled to receive proper and reasonable compensation for every labor or service performed and expense, disbursements, and damages incurred by him or them in the discharge of their said trust in case they shall take possession of said premises or any part thereof or manage the same, and shall not in any manner be liable or responsible for any loss or damage unless the same shall happen by gross neglect or wilfull malfeasance on their part; and also that in case of death, resignation, or other disability of the said party of the second part or their successor or successors from time to time, at any time hereafter, or in case of the vacancy in the trusteeship from any cause, it shall
421 be competent and lawful for the said party of the first part or its successors to apply to any court of record in the States of Iowa or Missouri, or of the United States, of adequate jurisdiction, to appoint a successor or successors to said party of the second part to fill the vacancy so made in said trust hereby created; and upon such appointment and the acceptance thereof the person or persons, body politic or corporate, so appointed shall become and be vested, for the uses and interests and purposes herein set forth and

declared, with all the estate, rights, and powers, title and interest in and to the said party of the second part, without any other or further assurance or conveyances of the same, and shall perform all the duties of trustees in like manner as if he or they had been named in this instrument as trustees; and the said party of the first part hereby further covenants and agrees with the party of the second part and their successors, and with the holders of each and all of the said issues of six millions of dollars of bonds which may be issued, that the said party of the first part will create and make a sinking fund for the redemption of such bonds and each of them by setting aside and depositing with three commissioners, to be appointed by the party of the first part for that purpose, from and after the first day of June, in the year one thousand eight hundred & seventy-five, and annually thereafter until the maturity of said bonds, the sum of thirty thousand dollars ($30,000). Such sinking-fund moneys shall from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds so issued, or in bonds of the Government of the United States, and the money accruing on any and all of such investments for interest, as fast
422 as the same shall be received, shall be added and paid unto said sinking fund and compounded therein continually and reinvested in like manner with the other money of said fund.

That the board of directors of said railway company, party of the first part, shall have entire control over the management of said sinking fund and every person in charge of or connected with the same, and shall, from time to time, direct in what bonds or securities it shall be invested and at what price or rates and how it shall be kept and the manner of keeping the accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys, of its securities or bonds, for safe keeping. Every bond of the said issue of six million dollars which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have matured or shall have been so absorbed or otherwise redeemed by said party of the first part, and the interests on such bonds held by said party of the first part and the interests on such bonds held by said sinking fund shall be paid by said railway company regularly, as the interest on its other similar bonds is paid.

In witness whereof the said party of the first part hath caused its corporate seal to be affixed hereunto and these presents to be signed by its president and secretary the day and year first above written.

[SEAL.] MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY,
By F. M. DRAKE, *President.*
C. W. BOWEN,
Secretary of the Missouri, Iowa and Nebraska Railway Company.

423 STATE OF IOWA, *Appanoose County,* } ss:

Be it remembered that on this 28 day of June, in the year of our Lord one thousand eight hundred and seventy, before me, the undersigned, K. P. Morrison, clerk of the district court within and for said county and State, and duly authorized by law to take acknowledgements of deeds, etc., personally appeared F. M. Drake, who is personally to me known to be the same person whose name is subscribed to the above and foregoing instrument of writing as president of the Missouri, Iowa and Nebraska Railway Company, party thereto, and acknowledged the said instrument to be the act and deed of the Missouri, Iowa and Nebraska Railway Company, by him, as president thereof, subscribed for the same; and also, at the same time and place, personally appeared before me C. W. Bowen, who is well known to me to be the same person whose name is subscribed — the foregoing instrument of writing as secretary of the Missouri, Iowa and Nebraska Railway Company, as party thereto, and acknowledged that he executed the said deed as and for the act and deed of the said Missouri, Iowa and Nebraska Railway Company for the uses and purposes mentioned in said instrument.

In testimony whereof I, K. P. Morrison, clerk of the said court, have hereunto set my hand and affixed the seal of the district court aforesaid this the day and year last above written.

[SEAL.] K. P. MORRISON,
Clerk of the District Court of said County.

Filed for record July 6th, 1870.

JOHN C. SMITH, *Rec'r.*

424 STATE OF MISSOURI, *County of Scotland:*

I, C. F. Sanders, circuit clerk and *ex officio* recorder in and for said county, hereby certify that the above is a true copy of the foregoing instrument as the same appears of record in my office in Book "Q," on pages 423 to 434, inclusive.

Witness my hand and official seal.

Done at office, in Memphis, this 9th day of October, 1885.

[SEAL.] C. F. SANDERS,
Cir. Clerk and ex Officio Recorder.

The acceptance of said mortgage is in the words and figures following, to wit:

Acceptance of Mortgage.

Know all men by these presents that the Farmers' Loan and Trust Company of New York hereby accepts and assumes all the obligations mentioned, accepted, and assumed in the foregoing indenture by the party of the second part, to wit, a trust deed of mortgage, dated the 1st day of June, A. D. 1870, made by the Missouri, Iowa and Nebraska Railway Company to the Farmers' Loan

and Trust Company of New York, conveying the property and franchises of the said mortgagor to the said mortgagee in trust to secure the payment of 3,000 bonds of $1,000 each, and that the said Farmers' Loan and Trust Company make this formal acceptance of the said trustee to remove any doubt which might arise from their not having signed the said trust deed itself and intending to bind itself, its successors and assigns, as fully and completely as if
425 it had signed and acknowledged the said trust deed.

In witness whereof the said Farmers' Loan and Trust Company hath caused its corporate seal to be attached and the same attested by the signatures of its president and secretary this 27th day of June, 1870.

THE FARMERS' LOAN & TRUST CO.
Attest: R. G. ROESTON. [L. S.]
GEO. P. FITH, *N. Y.*

UNITED STATES OF AMERICA, *State of New York,* } ss:

By this public instrument be it known to all whom the same doth or may in anywise concern that I, Edward F. Corey, a notary public in and for the State of New York, by letters patent under the great seal of State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that on the date hereof personally appeared before me Roswelle G. Rosston, known to me and known to me to be the president of the Farmers' Loan and Trust Company, and he acknowledged he signed, sealed, and delivered the same as the act and deed of said company, and that the seal of said company and his signature as president was so affixed by order of the trustees.

In testimony whereof I have subscribed my name and caused my official notarial seal to be hereunto affixed the 18th day of July, in the year of our Lord one thousand eight hundred and seventy, in the 95th year of the Independence of the United States of America.

[SEAL.] EDWIN F. COREY,
Notary Public of the State of New York.

Filed for record August 30th, 1870.

JOHN C. SMITH, *Rec'r,*
Per JOHN S. CARTER, *Deputy.*

426 STATE OF MISSOURI, *County of Scotland,* } ss:

I, C. F. Sanders, circuit clerk and *ex officio* recorder in and for said county, hereby certify that the above is a true copy of the foregoing instrument as the same appears of record in my office in Book "Q," pages 453 and 454.

Witness my hand and official seal.

Done at office, in Memphis, this 10th day of October, 1885.

[SEAL.] C. F. SANDERS,
Cir. Clerk and ex Officio Recorder.

The COURT: To secure those bonds?

Mr. CUNNINGHAM: No; the point we make is that there was a conspiracy to obtain those bonds and to make the stock worthless.

Mr. OVERALL: This mortgage is dated the first day of June, 1870, and recorded in Scotland county July 6th, 1870; that was before the subscription was made.

The COURT: Before any action was taken?

Mr. OVERALL: Before any action was taken by the county; we object to the mortgage because it cannot affect the question as to the validity of these bonds.

The COURT: I will sustain the objection.

To which ruling of the court defendant's counsel then and there excepted.

Mr. CUNNINGHAM: I next offer the transcript of the case of Levi J. Wagner against Charles Mety and others, from circuit court of *Shelby* county, Mo.

Said transcript is in the words and figures following, to wit:

427 *Transcript.*

STATE OF MISSOURI, } *ss:*
County of Scotland, }

Be it remembered that heretofore, to wit, on the 11th day of September, A. D. 1871, there was filed in the office of the clerk of the circuit court of said county of Scotland a petition, which said petition is in words and figures as follows, to wit:

Injunction.

In the Circuit Court of Scotland County.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, & JOSEPH SPARKS, Plaintiffs,

against

CHARLES METY, JAMES S. FULLERTON, WILLIAM DAWSON, DAVID B. Cooper, & James E. Marquis, Defendants, Missouri, I. and Nebraska Railway Company.

To the Hon. Elias V. Wilson, judge of the circuit court of Scotland county, in the fourth judicial circuit, and of the 4th judicial circuit court in the State of Missouri:

Plaintiffs state that they are residents and tax-payers & citizens of Scotland county, Missouri; that on the 9th day of August, A. D. 1870, the defendants, William Dawson, David B. Cooper, and James E. Marquis, were justices of the county court of Scotland county, Missouri, duly commissioned and qualified and acting as such, and that on the said day and year aforesaid, while sitting as the county court of said county of Scotland, they, the said justices, then and

there unlawfully and without authority of law did make and
428 cause to be entered of record the following illegal and unlawful order, to wit:

At this day a petition was presented to the court signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Guynne, R. P. Wayland, and divers other persons to the number of thirteen hundred and sixty-five tax-payers & residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock in the Missouri, Iowa and Nebraska Railway Company, payable in county bonds due twenty-five years from date, bearing interest from date at the rate of eight per cent. per annum, payable annually, commencing from date of compliance of contract on the part of the company of said railway; now, therefore, in consideration of the prayer of the petitioners and in pursuance and by virtue of law and the power therein given to the court to subscribe stock in said railway company, it is ordered by the court that the county of Scotland, in in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars capital stock of the Missouri, Iowa and Nebraska Railway Company, payable in the bonds of said county, of the denomination of one thousand dollars each, due twenty-five years from date of issue and bearing eight per cent. interest per annum, the interest payable annually in the city of New York, on the terms and conditions following, to wit: One hundred thousand dollars of said bonds to be delivered to said company when said road shall have been graded, bridged, and tied and the track laid and the cars running thereon from Alexandria, Missouri, to a permanent depot located within one-half mile of the court-house in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall
have then completed their said line of road from Memphis to
429 the western north line of said county and the cars are running over the same through said county; provided said railway shall be so located as to miss the western and strike the north line of said county it shall do so at a point not exceeding four miles east of the northwest corner of said county. Said railroad shall be so built and the cars running thereon as aforesaid within two years from the date of this order; otherwise this subscription shall be null and void; and it is ordered further that Henry M. Gorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company, to represent said county at the meetings of the stockholders of said company, to cast the vote of said *company*, and receive its dividends; and in order that the interest of the people may be fully guarded the court doth appoint as trustee Charles Mety, of said county, whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued and to have custody of the same, and as soon as the said railway company shall have complied with the stipulations above set forth the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company and shall at the same time receive from said treasurer or other agent of said

company an equal amount in certificates of stock of the said railway company, which said certificates of stock the said trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his action, shall be presented to the county court at the next meeting thereafter, and that said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security, to be
430 approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trust; it is further ordered by the court that the county attorney for said county shall proceed to have said bonds printed or lithographed, and that the presiding justice of the county court of said county shall sign the same and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annual coupons attached, and the trustee aforesaid shall, when he delivers said bonds to said railway company, detach any or all coupons for interest that may have past maturity and cancel and return the same to the treasurer of said county when his report as aforesaid is made, and shall enter upon the next maturing coupon on said bonds the date of delivery to said company in order that said company shall receive interest only from the date they are entitled to receive said bonds; it is provided further that said railway company shall pay the expenses of lithographing and printing said bonds.

Plaintiffs further state that said county justices, sitting as a court, illegally and without the authority of law, on the day and year aforesaid, appointed the said Henry M. Gorin agent for said county of Scotland to subscribe said stock of said county upon the books of said railway company, and illegally *by* and without the authority of law authorized said Gorin to represent said county at the meeting of the stockholders of said company, and illegally and without the authority of law authorized said Gorin to cast the vote of said county and receive the dividends, and illegally and without the authority of law appointed the defendant, Charles Mety, trustee to receive same bonds, and illegally and without the authority of law directed him to receive said bonds, per the clerk of the county
431 court of Scotland county aforesaid, as soon as the same were issued, and illegally and without authority of law authorized him to have the custody of said bonds, and illegally and without the authority of law authorized the said Mety to deliver said bonds to said railway company, and all other powers conferred upon said Mety by the said county justices, sitting as a court, illegally and without the authority of law, and that the said justices, sitting as a court, on the day and year aforesaid, illegally and without the authority of law subscribed two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company, and illegally and without the authority of law ordered and authorized the county attorney of said county of Scotland to have said bonds printed or lithographed, and illegally and without the authority of law ordered and authorized the presiding justice of the county

court of said county to sign said bonds, and illegally and without the authority of law ordered and authorized the clerk of the county court of said county to make the proper attestations of his signature, and plaintiffs further charge all other acts of the said justices, sitting as a court, of and concerning the subscription to capital stock of said railway company were wholly illegal and without the authority of law.

Plaintiffs further state, afterwards, to wit, on the — day of ——, 1870, the said county justices, sitting as a court, illegally and without the authority of law, caused said bonds to be issued, printed, lithographed, and signed by the presiding justice of the county court of said county, and illegally and without the authority of law caused the same to be delivered unto the possession of the defendant,

Charles Mety. Pl'ffs now state that defendant Mety now has
432 said bonds in his possession and in his care and custody and under his control, to be delivered to said company or its lawfully authorized agents or its assigns upon the said company complying with the terms, stipulations, and conditions in the said illegal order of the county court aforesaid. Plaintiffs state that said railroad company have located the line of their road within one-half mile of the court-house in said county of Scotland, and that the same has been graded, bridged, and tied and the track laid from said town of Alexandria to within some five to eight miles of said court-house and the work still progressing thereon to completion on some line or route from said court-house as aforesaid unknown to pl'ffs. Plaintiffs say that said company has permanently located a depot on said line within one-half mile of said court-house, and that said road is graded, bridged, and tied and track laid to within some five or eight miles of the place at which said depot is so located as aforesaid, and that if the laying of the track of said road progresses as it has been doing for a few months past it will be but a few weeks before it reaches the depot location as aforesaid. Plaintiffs now aver and charge that the said railroad company has no power or authority under its charter or articles of association or consolidation or under the laws of this State to locate and build its road from Alexandria aforesaid by way of court-house or upon the line aforesaid, and that its location within one-half mile of the court-house aforesaid and upon said line and the building of said road is without warrant or authority of law, and the subscription by the court aforesaid or agent thereof to said company for stock as aforesaid is null and void.

Plaintiffs aver and state that said Mety is now ready to de-
433 liver one hundred thousand dollars of said bonds so as aforesaid delivered to him upon the completion of said road to the depot location, as aforesaid, — the said railroad company or its assigns, and intends so to do. Plaintiffs aver and further state that if said bonds should be so delivered that it is the intention of said company to assign and transfer them to innocent purchasers to raise money to pay for work, &c., done and performed in, on, and about said road, and that as citizens and tax-payers as aforesaid they will suffer great wrong and unreparable injury and damage thereby; wherefore pl'ffs pray that said Mety be restrained and enjoined from the delivery

of said bonds or coupons or any part thereof to said company or any other company, party, or person, and that upon a final hearing of this cause he be required to deliver the same in court here to be cancelled, and that this court do cancel the same, and that said justices of the county court aforesaid be restrained and enjoined from appointing any further persons or agents for said county of Scotland to have or possess said bonds or coupons or to act in the board of said railroad company, and that said Fullerton be restrained and enjoined from paying said bonds or coupons or any part thereof out of any money belonging to said county of Scotland or which he holds or may hold as treasurer thereof.

L. J. WAGNER.

BLAIR, ANDERSON, HILLIS & CONRAD,
Att'ys for Pl'ffs.

Levi J. Wagner, one of the plaintiffs, makes oath and says that the matters and things set forth in the above petition are true, to the best of his knowledge and belief.

L. J. WAGNER.

434 Subscribed & sworn to before me this 7th of Sept., 1871.
THOMAS B. JEFFRES, *Clerk.*

Filed Sept. 11th, 1871.
CHARLES S. MARTIN, *Clerk.*

And afterwards, to wit, on the 3rd day of October, A. D. 1871, at a circuit court continued and held at the court-house in the town of Memphis, in said county, before Hon. E. V. Wilson, judge, the following, among other, proceedings were had, to wit:

Petition for Injunction.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, and JOSEPH SPARKS, Plaintiffs,

against

CHARLES METY, JAMES S. FULLERTON, WILLIAM DAWSON, DAVID B. COOPER, and JAMES E. MARQUIS, Defendants.

Now comes George Forister and Washington Forrester, by their attorney, Edwin G. Pratt, and file herein their motion; which motion is as follows, to wit:

LEVI J. WAGNER *et al.*
vs.
CHARLES METY *et al.*
} Injunction.

George Forister and George Washington Forister come and suggest to the court that they are informed that they are parties to a bond in accordance with law given in case an injunction is granted in the above cause. They aver that said bond was prepared, as they supposed, for costs and expenses upon an application for injunction

against Charles Mety *et al.* at the circuit court of Lewis county,
435 in September. They aver that they have not consented to join in any bond to be given in the above-instituted cause in case an injunction be granted, and they ask to be discharged, and that the bond was not given by them for the purposes of this cause, nor will they join therein to restrain defendants according to the prayer of the bill; and they ask the protection of the court in the premises.

EDWIN G. PRATT,
Att'y for George Forrister & George W. Forrister.

Filed Oct. 3rd, 1871.

C. S. MARTIN, *Clerk.*

And afterwards, to wit, on the 4th day of October, A. D. 1871, at a circuit court continued and held at the court-house in the town of Memphis, in said county of Scotland, before Hon. E. V. Wilson, judge, the following, among other, proceedings were had, to wit:

LEVI J. WAGNER *et al.*
vs.
CHARLES METY *et al.* } Injunction.

Now comes William Searight, by his attornies, Birch and Mackey, and files herein his motion; which said motion is as follows, to wit:

LEVI J. WAGNER *et al.*
vs.
CHARLES METY *et al.* } Injunction.

William Searight comes and suggests to the court that he is informed that he is party in a bond in accordance to law in case an injunction be granted in the above cause. He avers that
436 said bond was prepared, as he supposed, for costs and expenses *when* an application for injunction against Charles Mety *et al.* at the circuit court of Lewis county, in September. He avers that he has not consented to join in any bond to be given in the above-entitled cause in case an injunction be granted, and he asks to be discharged, and that the bond was not given by him for the purpose of this cause, nor will he join therein to restrain the defendants according to the prayer of the petition, and he asks the protection of the court in the premises.

BIRCH & MACKEY,
For Searight.

Filed Oct. 4th, 1871.

CHARLES S. MARTIN, *Clerk.*

And afterwards, at the same term of court, to wit, October term, A. D. 1871, and on the 12th day of said month, the following, among other, proceedings, were had, to wit:

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, & JAMES M. GORDON and JOSEPH SPARKS, Plaintiffs,

vs.

CHARLES METY, JAMES S. FULLERTON, WILLIAM DOWSON, DAVID B. COOPER, and JAMES E. MARQUIS, Defendants.

Now, at this day, come the said plaintiffs, by their said attorneys, and move the court for leave to file herein their amended petition in this cause sixty days before the next term of this court, and, there appearing no objections thereto, said motion is granted and said cause continued.

437 And afterwards, to wit, on the 28th day of August, A. D. 1872, at a circuit court continued and held at the court-house in the town of Memphis, in said county of Scotland, before the Hon. E. V. Wilson, judge, the following, among other, proceedings, were had, to wit:

LEVI J. WAGNER *et al.*
vs.
CHARLES METY *et al.*
} Injunction.

Now, at this day, this cause coming on to be heard, and thereupon come the said parties, by their respective attornies, and thereupon, on motion of said plaintiffs, leave is granted them to file amended petition herein *instanter*. Amended petition thereupon filed by said plaintiff; to all of which defendants except and pray that their exceptions may be noted, which is accordingly done, and the cause continued until the next term of this court.

In the Circuit Court of Scotland County, Missouri.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, and JOSEPH SPARKS, Plaintiffs,

vs.

MISSOURI, IOWA & NEBRASKA RAILWAY COMPANY, CHARLES METY, James S. Fulierton, William Dawson, David B. Cooper, and James E. Marquis, Defendants.

Plaintiffs, by way of amendment to their original petition herein, state that by an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Alexandria and Bloomfield
438 Railroad Company," approved February 28th, 1857, the Alexandria & Bloomfield Railroad Company was chartered and incorporated; that by such charter said company was authorized to survey, mark, locate, and construct a railroad from the city of Alexandria, in the county of Clarke, in the State of Missouri, in the direction of Bloomfield, in the State of Iowa, to such point on the northern boundary line in the State of Missouri as shall be agreed upon by said company and a company authorized on the part of the State of Iowa to construct a railroad to intersect the road authorized to be constructed by the provisions of this act at the most practicable point

on said State line. Plaintiffs state that said Alexandria and Bloomfield Railroad Company was duly organized in the year A. D. 1864 and existed under the name & style of the Alexandria and Bloomfield Railroad Company until the day of the date hereinafter mentioned. Plaintiffs state that the General Assembly of the State of Missouri afterwards, to wit, on the 19th day of February, 1866, passed an act entitled "An act to amend an act entitled to incorporate the Alexandria and Bloomfield Railroad Company, approved August 9th, 1857, authorizing said company to change the incorporate name, also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, Atchison county, Missouri, and also authorizing said company to accept all or any of the sections of this act, the same to be binding on said railroad company," which was duly approved on February the 19th, 1866. Plaintiffs state that said company soon thereafter adopted the first section and no other of said last-named act, and from thenceforward said Alexandria & Bloomfield Railway Company took, used,
439 and was known by the name of the Alexandria and the Nebraska City Railroad Company up to the date hereinafter named, viz., May 2, A. D. 1870, and did proceed to survey, mark, & locate the line of their said road, and did permanently locate the same, commencing at the said town of Alexandria and running thence westerly to the town of Luray, in said county of Clarke; thence in a northwesterly direction up the divide between the waters of the Wyconda & the Little Fox river, crossing the line between Scotland & Clarke county about five miles south of the Iowa and Missouri line; thence in the direction of Bloomfield aforesaid through said Scotland county, striking said Missouri and Iowa line some ten miles east of the northwest corner of said Scotland county, the greater portion of which said line from Luray to the State line as aforesaid was granted by said company. Plaintiffs state that prior to the 2d day of May, A. D. 1870, a railroad company was formed, organized, and incorporated under the laws of and in the State of Iowa under the name and style of the Iowa Southern Railway Company for the purpose of building a railroad in said State to the Missouri & Iowa State line, and continued to exist and be in full force until the 2d day of May, A. D. 1870, when it was consolidated with the said Alexandria & the Nebraska City Railroad Company, as hereinafter stated. Plaintiffs further state that afterwards, to wit, on the 26 day of March, A. D. 1870, the said Alexandria & the Nebraska City Railroad Company and the said Iowa Southern Railway Company did, by their certain written articles — agreement and association by the presidents & directors of said companies, respectively, signed, unite said companies into one company and consolidated the capital stock thereof upon the terms & stipulations therein set out and named,
440 a duly certified copy of which is herewith filed as Exhibit "A."

Plaintiffs state that the terms and provisions of said consolidation were by the holders of a majority of the capital stock in said Iowa and Southern Railway Company, on the 23rd day of April, A. D. 1870, and by the holders of a majority of the capital stock in the

Alexandria & Nebraska Railroad Company, on the 2nd day of May, 1870, duly appointed, as will appear by the certificates of the secretaries of said companies, respectively, attached to said articles of consolidation. Plaintiffs state that by the said articles of consolidation it was stipulated and agreed between said companies that the name of said consolidated company shall be "The Missouri, Iowa and Nebraska Railway Company," which pl'ffs aver is now its name.

Plaintiffs further state that by the thirteenth article of consolidation aforesaid it is stipulated and agreed as follows: The line of the consolidated railway shall extend continuously from the city of Alexandria, Clarke county, Missouri, on the Mississippi river, its eastern terminus, as the same is now located and partially graded, to Centerville, in Appanoose county, Iowa; thence west to the Missouri river, as contemplated by the charter of the Iowa Southern Railway Company, and the said consolidated company shall complete and put in operation said line of railway from the city of Alexandria, Missouri, to Centerville, Iowa, and from thence westward to the Missouri river, as soon as practicable, and shall continue to maintain and operate said railway as a first-class road at, from, and between the said terminus, through its entire length, during the corporate existence of the said consolidated company. Plaintiffs aver and charge that the line of said road referred to in said
441 article thirteen, as located and partially graded, was and is the same line so as aforesaid surveyed, marked out, & located by the said Alexandria and the Nebraska City Railroad Company in a northwesterly direction to Iowa-Missouri line from Luray as aforesaid, and the grading upon which had been — by said company the greater portion of the way from Alexandria to Luray, and from Luray to the Scotland county line aforesaid *had* the greater portion of the way from said Scotland & Clarke county line, as aforesaid.

Plaintiffs state that on the 9th day of August, A. D. 1870, the defendants, Dawson, Cooper & Marquis were, and at the institution of this suit were, and now are the justices of the county court for said county of Scotland, in the State of Missouri, duly commissioned and qualified, and that on said day, whilst as the county court for said county of Scotland, made and caused to be entered of record in said court the following order and proceedings, viz: At this day a petition was presented to the court signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Guynne, R. P. Wayland, and divers other persons, to the number of thirteen hundred and sixty-five, taxpayers and residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock to the Missouri, Iowa & Nebraska Railway Company, payable in county bonds, due twenty-five years from date, bearing interest at the rate of eight per cent. per annum, the interest payable semi-annually, commencing from date of completion and of contract on the part of said railway company: Now, therefore, in consideration of the prayer of the petitioners, and in pursuance and by virtue of law and the power that is given to the court to subscribe stock in said railway company, it is ordered by the court that the county of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars to

442 the capital stock of the Missouri, Iowa & Nebraska Railway Company, payable in the bonds of said county of the denomination of one thousand dollars each, due twenty-five years from the date of issue, and bearing eight per cent. per annum, the interest payable annually in the city of New York, on the terms and conditions following, to wit: One hundred thousand dollars of said bonds to be delivered to said railway company when said road shall have been graded, bridged, & tied and the track laid and the cars running through from Alexandria, Missouri, to a permanent depot located in one-half mile of the court-house in Memphis, in said county, and their issuing one hundred thousand dollars of said bonds, to be delivered to said company when said company shall have completed their said line of road from Memphis to the west or north line of said county and the cars running over the same through said county, provided the said railroad shall be so located as to miss the west line and strike the north line of said county; it shall do so at a point not exceeding four miles east of the northwest corner of said county; said railroad shall be so built and the cars running through, as aforesaid, within two years from the date of this order, otherwise this subscription shall be null and void; and it is ordered further that Henry M. Gorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company, to represent said county at the meetings of the stockholders of said company, to cast the vote of said county, and receive the dividends; and, in order that the interests of the people may be fully guarded, the court doth appoint as trustee Charles Mety, of said county, whose duty it shall be to receive from the clerk of the
443 county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued, and to have the custody of the same, and as soon as the said railroad company shall have complied with the stipulations above set forth the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company, and shall at the same time receive from said treasurer or the agent of said company an equal amount in certificates of stock of said railway company, which said certificates of stock the same trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his actions, shall be presented to the county court at the next meeting thereafter; and that said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security to be approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trustee.

It is further ordered by the court that the county attorney of said county shall proceed to have said bonds printed or lithographed, and that the presiding justice of the county court of said county shall sign the same, and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annual coupons attached, and the trustee aforesaid shall, when he delivers said bonds to said railway company, detach all, any or all, coupons for interest that may have passed maturity, and can-

cel and return the same to the treasurer of said county when his report, as aforesaid, is made, and shall enter upon the next maturing coupon of said bonds the date of delivery to said company, in order that said company shall receive interest only from
444 the date they are entitled to receive said bonds; it is provided further that said railway company shall pay all the expenses of lithographing and printing said bonds. Plaintiffs say that said court did, soon after the date of said order and before the institution of this suit, subscribe for two hundred thousand dollars stock in the Missouri, Iowa & Nebraska Railway Company for and on behalf of said county of Scotland, and that said Gorin, in pursuance to said order, did, soon after the date of said order and before the institution of this suit, enter said subscription upon the books of said company according to and subject to the conditions in the said order made. Pl'ffs state that the said bonds and coupons were lithographed and printed as ordered and directed in the order aforesaid, and were to the amount of two hundred thousand dollars, with coupons attached, deposited with defendant Mety, who, on the 12th day of September, A. D. 1871, and at the institution of this suit, held the same duly signed by the presiding justice of said court and the clerk thereof, as prescribed and directed in the said order of the said court, the whole of which order and proceedings, and every act, order, or part thereof by the said county court, as also the act of said Gorin in entering said subscription in the books of said company, pl'ffs aver were done without warrant or authority of law. Plaintiffs say that said Missouri and Nebraska Railroad Company, without warrant or authority of law, previous to the institution of this suit, abandoned the line of their said road, located and partly graded, as aforesaid, in the direction of Bloomfield, Iowa, by said Alexandria and Nebraska City Railroad Company as aforesaid, and as agreed upon and located by the said Iowa Southern Railway Company and the said Alexandria and Nebraska City Railway Company in their articles of consoli-
445 dation aforesaid, and without warrant or authority of law, in pursuance of the terms, stipulations, and conditions in the said illegal order and proceedings of the county court aforesaid and previous to the institution of this suit, changed the line of their said road as located and partly graded from Alexandria to Bloomfield aforesaid, and located the same so as to run from the town of Luray aforesaid, by way of Memphis, in the county of Scotland aforesaid, to Lancaster, in Schuyler county aforesaid, and have located the line thereof within one-half mile of the court-house in said town of Memphis without warrant or authority of law. Plaintiffs say that on the 12th day of September, A. D. 1871, said company had said road graded, tied, bridged, and cars running thereon from said Alexandria within two miles of the court-house in Memphis aforesaid, and that after institution of this suit it was finished and completed to within one-half mile of said court-house, and a depot located permanently within one-half mile of said court-house, and the cars running on said road from Alexandria aforesaid to said depot location;

all of which pl'ffs aver were done and performed without warrant or authority of law.

Plaintiffs further aver and charge that it was, at the issuance of said bonds and at the institution of this suit, the object and intention of said county court and said railroad company to have the proceeds of the sale of said bonds applied to the payment of the work and labor done, paid, and performed upon the line of said road in Scotland county so as aforesaid illegally and without authority of law located by way of the town of Memphis and the court-house aforesaid, and that said bonds were issued by said county court and received by said
446 commissioner for that purpose and no other, and was the sole consideration for the change of said route by way of Memphis aforesaid; and plaintiffs aver and charge that it was, on the said 12th day of September, A. D. 1871, and at the institution of this suit, *was* the intention of said def't Mety to deliver the one hundred thousand dollars of said bonds, with coupons attached, as stipulated in the said illegal order of the said county court aforesaid, to the said Missouri, Iowa and Nebraska Railway Company or their agents or assigns, unless restrained by suit and injunction. Plaintiffs further aver and charge that two-thirds of the qualified voters of said county of Scotland had not at the time of said subscription for the capital stock of said company as aforesaid by said county court and said Gorin assented to said subscription at a regular or special election held therein, nor have they since so assented thereto. Plaintiffs say that def't Fullerton at the institution of this suit was and now is the treasurer of said county of Scotland, duly commissioned and qualified. Plaintiffs state that the said justices of the county court aforesaid did at the institution of this suit and now intend, while sitting as a county court for Scotland county, to issue the bonds of said county of Scotland or levy a tax upon all property made taxable by law for county purposes in said county of Scotland, plaintiffs can't say which, to raise funds to pay the coupons attached to said bonds as they fall due; that said county court did, at the institution of this suit and now intends to, issue the bonds of said county of Scotland or levy a tax upon all property made taxable by law for county purposes in said county of Scotland, pl'ffs can't say which, to raise funds to pay off bonds when due or the in-
447 stallments thereon which may be called for from time to time by the board of directors of said Missouri, Iowa and Nebraska Railway Company after said bonds shall have become due, which said money or funds so as aforesaid raised or collected to pay off said coupons or bonds will be paid into the treasury of said county and warrants drawn therefor on the treasurer of said county in favor of said railroad company or their assigns; that said treasurer intends and his successors in office will pay off said warrants out of the funds collected as aforesaid unless said bonds and coupons be delivered up and cancelled or payment thereof be restrained by injunction. Plaintiffs further state at the institution of this suit said railway company intended to assign and transfer said bonds and coupons to innocent purchasers, as soon as they receive the same, to raise funds to pay for the work done and intended

to be done in said Scotland county on the line of said road as located through the whole of said county of Scotland, on the route from Luray by way of Memphis as aforesaid. Plaintiffs state that said company had at the institution of this suit located the line of their said road from Memphis aforesaid, a little north of west, to the town of Lancaster, in Schuyler county, Missouri, without warrant or authority of law; that said line as thus located from Luray by way of Memphis & Lancaster aforesaid does not run in the direction of said town of Bloomfield, in the State of Iowa aforesaid, from the town of Alexandria aforesaid; that it does not run upon the line nor to the point on the northern boundary line of the State of Missouri, nor near the same, agreed upon by the said Alexandria & the Nebraska City Railroad Company, as declared and specified in their said articles of consolidation as aforesaid. Plaintiffs further state
448 that the line of said road as located by said company from the town of Luray aforesaid by way of Memphis and Lancaster, as aforesaid, is a change of the general route of the line of the road as agreed upon and set out by said consolidation and charter of the said Alexandria & Bloomfield Railroad Company as aforesaid, and that said change was not made to shorten the line of said road, or to overcome natural objections thereto, or to secure economy in its construction; and pl'ffs further aver and charge that said line was not changed as aforesaid by a vote of two-thirds of the directors of said Missouri, Iowa and Nebraska Railway Company; and plaintiffs aver and charge that at the institution of this suit they were and now are citizens and resident tax-payers of Scotland county aforesaid, and are separately and respectively owners of a large amount of real estate and other property in said Scotland county taxable by the laws of the State of Missouri for county purposes and for paying for subscriptions by counties for stock in railroad companies in said State and for county purposes, and as such citizens their said property will be subject to be assessed and taxed to pay off and discharge said illegal bonds and coupons unless the said bonds and coupons be delivered up and canceled or the payment thereof be restrained and enjoined. Wherefore pl'ffs pray that upon the final hearing of this cause said defendant Mety be required to bring said bonds and coupons into this court and deliver the same to the clerk hereof, and that the court cancel the same or cause the same to be done, and that the order and proceedings of the county court aforesaid, and which are heretofore set out and recited, be declared null and void, and the said justices and their successors in office be forever
449 restrained and enjoined from further proceedings in the premises or in relation to the payment of said bonds and coupons or any part thereof, and that said defendant Fullerton, as treasurer of said county of Scotland, and his successors in office, be forever restrained and enjoined from paying off or paying any part of said bonds or coupons, or any bonds or coupons issued in lieu thereof or upon which money has been borrowed to pay off said bonds and coupons or any part thereof, and that said railroad company be restrained from recovering said bonds and coupons into its possession or the possession of its agents from said def't Mety or

any other person acting for him or as the pretended agents of said county of Scotland.

ANDERSON AND BLAIR,
Att'y for Pl'ffs.

Filed August, 1872.

C. S. MARTIN, *Clerk.*

And afterwards, on the 23d day of December, A. D. 1872, at a circuit court continued and held at the court-house in the town of Memphis, Scotland county, Missouri, before Hon. E. V. Wilson, judge, the following, among other, proceedings were had, to wit:

Injunction.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

On application of the defendants, leave is hereby granted to file their answer to plaintiff's amended petition 30 days before the next regular term of this court, to which time this cause is continued.

450 In the Scotland County Circuit Court. April Term, A. D. 1873.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDEN, and JOSEPH SPARKS, Plaintiffs,

against

MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, CHARLES Mety, James S. Fullerton, William Dawson, David B. Cooper, & James E. Marquis, Defendants.

Now comes the said defendants and, for answer to the petition of said plaintiff herein, leave of court for that purpose having been first had and obtained, say: Defendants admit each and every allegation of said petition of said plaintiffs relative to the charter and organization of the Alexandria and Bloomfield Railroad Company, but defendants deny that there was ever, under or by virtue of said charter or under any other charter, any permanent location of the said Alexandria and Bloomfield railroad on the said Alexandria and Nebraska City railroad previous to the consolidation, as in said petition set forth, west or northwest of the town of Luray, in Clarke county, Missouri aforesaid, in the articles indicated by said plaintiffs in their said petition herein. Defendants admit, as in the said petition of the said plaintiffs charged, the incorporation and (their) existence of the Iowa Southern Railroad Company, and that said company continues to be known as the Iowa Southern Railroad Company until the 2nd day of May, A. D. 1870, when said railroad company was consolidated with the Alexandria and Nebraska City Railroad Company, when, upon said several acts, as in said petition more particularly set forth, to wit, the ratification of said
451 several articles of consolidation by said Iowa Southern Railroad Company and said Alexandria and Nebraska City Rail-

road Company, the name was changed and said respective railroad companies became and were merged into the Missouri, Iowa and Nebraska Railway Company, now defendants, and that said acts of consolidation and the said several acts of ratification and approval by the said contracting parties to the said several articles of consolidation, as the said petition of the said plaintiffs more particularly sets forth, defendants admit to be true; and defendants furthermore admit that by the terms of said article thirteeen of said articles of consolidation, as in petition set forth, said consolidated road, the Missouri, Iowa and Nebraska Railway Company, now defendant, was bound to construct and operate said road so constructed from Luray, in Clarke county, Missouri, as then located and partially graded to Centerville, in Appanoose county, Iowa, thence west to the Missouri river, as contemplated by the charter of the Iowa Southern Railroad Company, on the nearest and most practicable route, and that the said route by way of Arbela and court-house in Memphis, in Scotland county, as the same is now contemplated — operated, owing to the shortness of the time thereof, economy of the construction, and the facility and productiveness of its operation, is the most practicable route between said points for the construction and operation of said railroad; and defendants specifically deny that said article thirteen of said articles of consolidation referred to or contemplated said northwesterly direction as referred to in said petition of said plaintiffs herein; and defendants say and charge the fact to be that said route had long theretofore been abandoned, never having been permanently located as aforesaid from said town of Luray as aforesaid, thence in a
452 northwesterly direction, between the Wyconda and Fox rivers, and said route, as now located, constructed, and operated, from the town of Luray as aforesaid, thence westward by way of Arbela and the court-house in Memphis as aforesaid, had been adopted, surveyed, and considerable work and labor done thereon at the time of said consolidation, and the route so last aforesaid partially constructed was and is the only recognized route of said railroad, to wit, the Alexandria & Nebraska City Railroad Company, and which, by operation of law and by the terms of said several articles of consolidation, together with all and singular the said several acts of said contracting company in ratifying, approving, and confirming the same, became, was, and now is the only route and road of the said Missouri, Iowa and Nebraska railway, now defendant.

Defendants further state it is true, as alleged in plaintiffs' petition, that upon the petition of citizens of Scotland county, Missouri, the said William Dawson, David B. Cooper, and James E. Marquis were then and afterwards and at the time of the filing of plaintiffs' said petition herein the duly elected, commissioned, and acting justices of the county court of said county of Scotland and State of Missouri, and while so sitting as said county court and upon said petition of said citizens as aforesaid made and entered upon the records of said county court aforesaid the order and decree in said case, as is in said petition of said plaintiffs in words and figures set forth, in that said court, did, soon after the date of said order and

before the institution of this suit, by its duly appointed agents for that purpose, subscribe for said two hundred thousand dollars of stock in the said Missouri, Iowa and Nebraska Railway Company and enter said subscription upon the books of said company according to and in pursuance of the said terms of said order of
453 said county court; that said bonds, with interest coupons attached to each of them, were issued as in said order named, were duly signed by the presiding officer and clerk of said court, and placed in the hands of Charles Mety, Esq., def't, the trustee in said order made; but defendants say that they have no knowledge or information sufficient to form a belief as to *when* said bonds were at the time of the institution of this suit. Defendants respectfully deny that the whole of said order and proceedings and every act, order, or part thereof by the said county court, as also the act of the said Garin in subscribing said subscription in the books of said company, were done without warrant or authority of law. Defendants further deny that said Missouri, Iowa and Nebraska Railroad Company without warrant or authority of law previous to the institution of this suit abandoned the line of their said road located as aforesaid in the direction of Bloomfield, Iowa, as aforesaid, or that said route *is* in the direction of Bloomfield was agreed upon and adopted by the said Iowa Southern Railroad Company and the said Alexandria & Nebraska City Railroad Company, the contracting parties in their said articles of consolidation, or that the same was done without warrant or authority of law, or that the same was done in pursuance of the terms, stipulations, and conditions of said order of said Scotland county court or of the proceedings of the said county court, or any of them were done or had for that purpose or in pursuance thereof. or that previous to the institution of this suit or at any time said defendants changed the line of their said road — railway as in said petition described so as to change the general direction of said road in
454 any particular than as the same was contemplated and stipulated in said thirteenth article of the said articles of consolidation; and def'ts aver that the line and general direction of said railroad through the said county of Scotland and State of Missouri is as was contemplated in part by said contracting parties previous to, at the time of, and ever since the adoption and ratification of said articles of consolidation by said companies; that the said route had been surveyed, located, & partially —(from a point at or near the said town of Luray, in Clarke county, Missouri, in a westerly direction to the town of Arbela, in Scotland county, Missouri, being in the same general direction of the town of Memphis and almost on the identical ground on which defendants have since built and are now opering said railroad by way of Memphis to Centerville, in Appanoose county, Iowa, the terminus prescribed in said article thirteen of the said articles of consolidation) previous to the said 2d day of May, A. D. 1870, time of said consolidation and after the abandonment of said northwesterly line described by said pl'ffs in their said petition, and that said northwesterly line so described by plaintiffs was not and could not have been the route contemplated if any special route was so

by said contracting parties contemplated in said thirteenth article of said contract of consolidation. Defendants specifically deny that it was the object and only object of said county court at the time — issuance of said bonds and at the institution of the suit that said railroad company were to have the proceeds of the sale of said bonds applied to the payment of the work and labor done, had, and performed upon the line of said road in Scotland county, as said plaintiffs charged illegally and without authority of law, located by
455 way of the town of Memphis and court-house aforesaid, or that said bonds were issued by said county court and received by said company for that purpose and no other, or that the same was the sole or any part of the consideration for the change of said route by way of Memphis as aforesaid. Defendants further say that it is true that two-thirds of the legal and qualified voters of said county of Scotland had not at the time of said subscription nor have they ever since assented thereto at a regular or special election had therein for that purpose; but defendants say that at the time the petition was filed and at the time said order was made by said county court (in said petition of plaintiffs recited) the same was all done under and by virtue of an act of the Legislature of the State of Missouri incorporating the Alexandria & Bloomfield Railroad Company, approved February 9th, 1877, granting by the provisions of section ten thereof to said Alexandria & Bloomfield Railroad Company the proceedings, rights, and annuities which were granted by the Legislature to the North Missouri Railroad Company by an act entitled An act to incorporate the North Missouri Railroad Company, approved March 3rd, 1851, and by the 12th section thereof, exempting the stockholders of said Alexandria & Bloomfield railroad from the operations of sections nine & ten of the act entitled An act to authorize the formation of railroad associations and to regulate the same, approved December 13th, 1855; and defendants say that by the provisions of said section fourteen (14) of the act of the General Assembly of the State of Missouri approved March 3rd, 1851, and entitled as aforesaid An act to incorporate the North Missouri railroad and which was part of the privileges, rights, immunities of the said Alexandria & Bloomfield railroad as aforesaid, it was provided as follows, to wit:
456 It shall be lawful for the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said company, and it may invest its funds in the stock of said company and issue the bonds of said county to raise the funds to pay the stock thus subscribed, and to take all proper steps to protect the interest and credit of said county; such county court may appoint an agent to represent the county, vote for it, and receive its dividend, and any incorporated city, town, or incorporated company may subscribe to the stock of said railroad company and appoint an agent to represent its interest, give its vote, and receive its demands, and may take proper steps to guard and protect the interest in such city, town, or corporation; and defendants say that all said rights, privileges, and immunities so granted as aforesaid to said North Missouri Railroad Co. and by said act of the Legislature, approved as aforesaid February 9th, 1857, incorporating

and transmitting to the Alexandria and Bloomfield Railroad Company the same privileges and immunities, and the said acts and articles of consolidation so as aforesaid ratified, approved, and confirmed transmitted to and reposed in the said Missouri, Iowa and Nebraska Railway Company as fully and entirely as the same was by said Legislature vested in said North Missouri Railroad Company all the rights, privileges, and immunities vested, created, and perpetuated in said section 14 of said act approved March 3rd, 1851; and defendants say that under and by virtue of the powers, privileges, and immunities all and singular said acts of said citizens and voters said county court, said agent, and justices *was* fully authorized by law in the premises.

457 Defendants further state that the said route in a westerly direction from the town of Luray as aforesaid by way of Memphis was adopted because chiefly of its economy in construction and successful operation by overcoming natural objections in point of business locations and otherwise, and that said direction of said railroad had been adopted by and partially graded and constructed under the original organization prior to the consolidation, and the said westerly route last adopted and partially constructed was the one contemplated in said articles of consolidation, and the subsequent solemn ratification of said consolidated companies, intent and understanding of said parties, and by the language of said 13th article adopted, ratified, & intended said last described route so far as the same had — that time been permanently —, thence by the nearest and most practicable route to Centerville, in Appanoose county, Iowa, as the route for said railroad and is the one upon which the same is now operated. Defendants, further answering, say that plaintiffs, although citizens of said county of Scotland, have no rights as such individuals for the remedies they seek to obtain in their said bill and petition, and ought not, therefore, maintain their action herein; that said two hundred thousand dollars of bonds with the unpaid coupons thereto respectively attached and made part thereof and only part of which are now past due have all been (in pursuance of said petition of said citizens so presented to said court as aforesaid and the subsequent action of said county court then and thereafter made in that regard of the said completion and operation of the said road of said Missouri, Iowa and Nebraska Railway Company as stipulated in said order and proceedings of said county court and the statute in such case made and provided) surren-

458 dered to said Missouri, Iowa and Nebraska Railway Company by defendant, Charles Mety, trustee as aforesaid; that said bonds, as defendants herein —, have all been lithographed and sold to and are held by parties to the defendants now unknown; that all and singular the actions, orders, decrees, construction, operation, and hypothecation and sale of said bonds and coupons are and have been done by defendants and each of them in good faith; and defendants, having fully answered, pray to be dismissed with costs.

BIRCH & MACKEY,
Att'ys for Defendants.

Filed March 21st, 1873.

CHAS. S. MARTIN, *Clerk.*

And afterwards, to wit, on the 22d day of April, A. D. 1873, at a circuit court continued and held at the court-house in the town of Memphis, in said county, before Hon. E. V. Wilson, judge, the following, among other, proceedings were had, to wit:

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

At this day come the said plaintiffs, by their attorneys, and file their application for a change of venue in this cause, which application is heard by the court.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

459 At this day come said parties, by their attorneys, and the application for a change of venue coming on to be heard, on motion, the same is submitted to the court, and the court, after hearing said application, doth award a change of venue of this cause to Shelby county. It is therefore ordered by the court that the venue of this cause be awarded to the county of Shelby; and it is further ordered that the clerk hereof make out a full, true, and complete transcript of the record and proceedings had in this court in relation to this cause and transmit the same, duly certified, together with all the original papers in this cause and not forming a part of the record hereof, to the clerk of the circuit court of said county of Shelby, in the State of Missouri.

STATE OF MISSOURI, *County of Scotland:*

I, Charles S. Martin, clerk of the circuit court within and for said county of Scotland, do certify that the above and foregoing pages contain a full, true, and complete transcript of the record and proceedings had in this court in relation to the above cause, entitled Levi J. Wagner *et al.* against Charles Mety *et al.*, as fully and completely as the same appears of record and on file in my said office.

In witness whereof I have hereunto set my hand and the seal of said court.

Done at my office, in Memphis, at the county aforesaid, on this 24th day of May, A. D. 1873.

[SEAL.] CHARLES S. MARTIN, *Clerk.*

Upon the back of the foregoing instrument is endorsed the following: Filed June 4th, 1873. L. Dobbin, clerk.

460 And afterwards, on the 4th day of June, 1873, there was filed in the office of the clerk of the circuit court of Shelby county, Missouri, the following:

In the Scotland County Circuit Court, Missouri.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDEN, and JOSEPH SPARKS, Pl'ffs,

against

MISSOURI, IOWA AND NEBRASKA CITY RAILWAY COMPANY, CHARLES Mety, James S. Fullerton, William Dawson, David B. Cooper, and James E. Marquis, Def'ts.

Application before E. V. Wilson, judge 4th judicial circuit, Missouri, at chambers, at Waterloo, Missouri, September 21st, A. D. 1871.

The parties appear before me on the 21st day of September, A. D. 1871, by their attorneys, and plaintiffs present their application for injunction against defendants, as set out in their petition; whereupon said parties, by their attorneys, agree that the hearing of said application be continued until the next term of the said Scotland circuit court and that the same shall be disposed of during said term—that is, said application to be granted or refused—and that I shall or may issue a restraining order against said defendants, as prayed for in said petition, until the granting or refusing said application, said parties, by their attorneys, agreeing also to waive all objec-
461 tions to said continuance and restraining order on account of irregularity or otherwise, which said agreement is in writing and duly signed by the said parties, by their said attorneys also, and in my possession; wherefore it is ordered by the undersigned that the said def't Mety be restrained from delivering the bonds delivered to him to be delivered the defendant, Missouri, Iowa & Nebraska Railway Company, or their agents or assigns, or any of the coupons attached thereto, and that said defendants, Dawson, Cooper, and Marquis, be restrained from further acting as the county court of said county of Scotland or as justices thereof in regard to the subscription for stock in said railway company or with reference to said bonds or coupons attached or the payment of any part thereof, and that said Fullerton be restrained from paying said bonds or coupons or any part thereof, and that said company be restrained from receiving said bonds or coupons or any part thereof from said Mety until the Scotland circuit court aforesaid — and until said application is either granted or refused by me, as agreed between said parties; this restraining order to be in force until the granting or refusing of the application as aforesaid.

September 21st, A. D. 1871.

E. V. WILSON,
Judge 4th Judicial Circuit, Mo.

And upon the back of the said instrument is the following:

Served this notice by delivering a true copy of same to Charles Mety and by leaving a true copy of same at the office in Memphis of the M., I. & N. R. R. Co. for H. W. Peck with a white person over fifteen years of age.

Done in Scotland Sept. 25, 1871.

W. D. SIGLER, *Sh'ff.*

Filed June 4th, 1873.

L. DOBBIN, *Clerk.*

462 In the Shelby County Circuit Court. Nov. Term, 1873.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

NOV. 26TH, 1873.

Now, at this day, come the parties to this cause, by their attorneys; whereupon, by agreement, this cause is continued.

And afterwards, to wit, on the 26th day of May, 1874, the following proceeding was had:

In the Shelby County Circuit Court. May Term, 1874.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

MAY 26TH, 1874.

Now, at this day, come the parties to this cause, by their attorneys. On motion of defendants' att'y, it is ordered by the court that he have leave to withdraw his answer filed in this cause; whereupon def'ts file their demurrer to pl'ffs' petition; after being considered by the court, — is taken under advisement.

And afterwards, to wit:

In the Shelby County Circuit Court. May Term, 1874.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

MAY 28TH, 1874.

Now, at this day, come the plaintiffs, by James G. Blair, their att'y, and defendants, by A. J. Baker, Esq., att'y; whereupon def'ts
463 file their demurrer to pl'ffs' amended petition, which said demurrer is in words and figures as follows, to wit:

In the Circuit Court of Shelby County, upon Change of Venue from the Circuit Court of Scotland County, Missouri.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, and JOSEPH SPARKS, Pl'ffs,

vs.

MISSOURI, IOWA & NEBRASKA RAILWAY COMPANY, CHARLES METY, James S. Fullerton, William Dawson, David B. Cooper, James E. Morgan, Defendants.

The defendant, The Missouri, Iowa and Nebraska Railway Company, for itself demurs to the plaintiff's petition for the following grounds of objection, to wit: 1st. The said petition does not state facts sufficient to constitute a cause of action in this, 1st, that by pleading the charter of the Alexandria and Bloomfield Railroad Company approved February 9th, 1857, the petition brings to the notice of this court all the provisions of said charter as contained in

said act, entitled An act to incorporate the Alexandria and Bloomfield railroad aforesaid, as also all the provisions of an act entitled An act to incorporate the North Missouri Railroad Company, approved March 3rd, 1851, so far as the same are applicable to said Alexandria and Bloomfield railroad, agreeably to the 10 section of the said act incorporating said Alexandria & Bloomfield Railroad Co., whereby the county court of Scotland county was author-
464 ized to make the subscription to the stock of said Alexandria & Bloomfield railroad. 2. By pleading the act of the General Assembly of the State of Missouri approved February 19th, 1876, and the action of the Alexandria and Bloomfield Railroad Company thereunder, the plaintiff shows to the court that the name of said Company was properly and lawfully changed to and became the Alexandria and Nebraska City Railroad Company. 3rd. By pleading the fact of consolidation of the said Alexandria and Nebraska City Railroad with the Iowa Southern Railway Company under the name of the Missouri, Iowa and Nebraska Railway Company, the plaintiffs show that said consolidation was lawfully made, and that the Missouri Iowa & Nebraska Railway Company was and is the lawful name of said Consolidated Company, and that all the right, privileges and immunities conferred upon the said Alexandria and Bloomfield Railroad Company by its said charter, including the right of the said county court to subscribe to the capital stock thereof, passed to and vested, "*Eo vestigo temporis*," in the Missouri, Iowa and Nebraska Railway Company. 4th. It does not state any facts from which it appears that the subscription made as the same is in said petition alleged to have beem made by said county court to the capital stock of said Missouri, Iowa and Nebraska Railway Company was unlawful. 5th. It does not state any facts showing that the alleged abandonment of the line of said railroad and the adoption of a new route and the locating and constructing the road thereon, as the same is set out and pleaded in said petition, was without authority of law and was or is illegal. 6th. It does not state any fact to show any interest in the plaintiffs which entitled them to call in question the lawfulness or unlawfulness of the abandonment of said first adopted route and the
465 adoption of said last-named route, nor does it state any facts to show that such change in any manner affects the interests of the said plaintiffs, or of said county of Scotland injuriously, nor that said alleged change of route in any manner affects the lawful character of the said subscription as alleged to have been made. Second. Said petition contains no equity entitling the plaintiffs to the relief prayed for nor to any relief in the premises.

A. J. BAKER &
F. T. HUGHES,
Atty's for Def'ts.

Upon the back of the said demurrer is the following endorsement: Filed May 26th, 1874. L. Dabbin, clerk.

And afterwards, on the 2d day of June, 1874, the following proceedings were had:

In the Shelby County Circuit Court. May Term, 1874. June 2d, 1874.

LEVI J. WAGNER *et al.*

vs.

CHARLES METY, THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, *et al.*

This cause coming on to be heard upon the amended petition of plaintiffs and the demurrer thereto filed by the defendant, The Missouri, Iowa & Nebraska Railway Company, the other defendants having failed to answer or demur to the amended petition, it is ordered that the material facts stated therein be taken as confessed as to such defendants making default; and after argument of
466 the legal points involved in the cause and raised by said demurrer, and the court being fully advised thereon, it is ordered that the demurrer be, and the same is hereby, overruled, and the defendant declining to make further answer, but electing to stand on the demurrer, it is therefore considered, ordered, and adjudged that the defendant, Charles Mety, be restrained and injoined from delivering to the Missouri, Iowa & Nebraska Railway Company, or to any other person or persons for said company the bonds of Scotland county described in plaintiff's petition or any of said bonds; and it is further ordered and adjudged and decreed that said Charles Mety produce any and all of said county bonds now in his possession before this court on the first day of the May term of this court, A. D. 1875, that the same may be cancelled; and it is further considered, adjudged, and decreed that the defendant, The Missouri, Iowa and Nebraska Railway Company, be restrained and injoined from recovering from said Charles Mety or from any other person or persons acting as agents for said county of Scotland the bonds in the petition described or any of said bonds; and it is further considered, adjudged, and decreed that all of the bonds in the petition described are void by reason of the want of legal authority in the county court of Scotland county to subscribe to the capital stock of said Missouri, Iowa & Nebraska Railway Company, and to issue said bonds in payment therefor; and it is therefore ordered, adjudged, and decreed that said Missouri, Iowa & Nebraska Railway Company cause all of said bonds in the petition described and now in the possession of said company, its servants, employees, agents, or attorneys, to be produced before this court on the first day of the May term thereof, 1875; and it is further considered that
467 the plaintiffs do have and recover of the defendant, The Missouri, Iowa and Nebraska Railway Company, their costs in this suit expended, and that they have thereof their writ of execution, the issuing of which is stayed until the November term, 1874.

And afterwards on the 22nd day of June, 1874, the following proceedings were had in the circuit court of the county of Shelby and State of Missouri, at the May term thereof, 1874:

In the Shelby County Circuit Court. May Term, 1874. June 22nd, 1874.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Now, at this day, comes the defendant, The Missouri, Iowa and Nebraska Railway Company, by its attorney, and files its motion praying the court to set aside the judgment and grant a new trial in this cause; which, being considered by the court, is overruled.

Whereupon def't files its bill of exceptions to the ruling of the court and asks that it be signed by the court and be made a part of the record in the case.

Which said bill is in words and figures following, to wit:

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Be it remembered that the above cause coming on to be heard upon the motion of the defendant, The Missouri, Iowa & Nebraska Railway Company, to set aside the judgment herein, which said motion is in the words and figures following, to wit:

468 In the Shelby County Circuit Court.

LEVI J. WAGNER *et al. vs* CHARLES METY *et al.*

The defendant, The Missouri, Iowa and Nebraska Railway Company, moves the court to set aside the judgment and decree herein, and upon a rehearing of said cause, to render a judgment sustaining the demurrer of this defendant and in favor of this defendant against pl'ffs for costs for the following reasons:

1. Because the court erred in deciding that the bonds were void for want of authority in the county court to make the subscription and issue the bonds.

2nd. The court erred in restraining def't, Charles Mety, from delivering said bonds to this defendant.

3rd. The court erred in restraining this defendant from issuing said bonds.

4th. The court erred in ordering said bonds to be produced for cancellation.

5th. The court erred in overruling defendant's motion to set aside the decree.

6th. The court erred in deciding the legal questions arising in the demurrer.

A. D. BAKER,
Att'y for Def'ts.

The court overruled said motion; to which opinion and decision of the court the said defendant excepted and prays that his bill of exceptions may be seen, signed, sealed and made a part of the record, which is done accordingly.

JOHN T. REDD, *Judge.* [SEAL.]

469 STATE OF MISSOURI, } *ss:*
County of Shelby, }

I, John J, Bragg, clerk of the circuit court within and for the county of Shelby and State of Missouri, do hereby certify that the above and foregoing instrument of writing is a true and perfect copy of the record and proceedings had in the cause therein named as fully and completely as the same appears of record and on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court hereto at my office, in the city of Shelbyville, Mo., this April 18th, 1878.

[SEAL.] JOHN J. BRAGG, *Clerk.*

The COURT: What is the date of the institution of that suit?

Mr. CUNNINGHAM: The 11th of September, 1871—10 days before the delivery of the bonds.

The COURT: What is the date of the subscription?

Mr. HUGHES: August, 1870—something over a year before that.

Mr. CUNNINGHAM: The evidence shows the bonds were not countersigned or delivered until after this suit was brought—10 days.

The COURT: The subscription was made when?

Mr. HUGHES: August, 1870.

The COURT: The bonds are dated when?

Mr. HUGHES: September 1st, 1870.

The COURT: And delivered when?

Mr. HUGHES: December 11, 1870.

470 The COURT: And suit was instituted when?

Mr. CUNNINGHAM: If I have an opportunity of saying something I would like to give my version; I know on the contrary—the evidence shows the contrary as to all three of those dates.

The COURT: Very well; I will hear you. What date do you give for the institution of the suit?

Mr. CUNNINGHAM: The witness has sworn that he did not receive those bonds until July, 1871; that they were executed in the early part of July, 1871; that they were countersigned and delivered on the 20th of September, 1871, and on the 11th of December, 1871, 10 days after this suit was instituted, and now counsel says in 1870——

Mr. HUGHES: I said the subscription was made in August, 1870.

The COURT: Very well; what is the date of this suit?

Mr. HAGERMAN: September 11th.

Mr. CUNNINGHAM: I will read——

The COURT: Can't you state in a word when the suit was instituted?

Mr. CUNNINGHAM: I can if I am not interrupted by a contrary

statement. This suit was instituted on the 11th of September, 1871.

The COURT: That is the date we want.

Mr. CUNNINGHAM: There is a great deal in this record that is not necessary, I think, to read.

Mr. OVERALL: Do you offer it in evidence?

Mr. CUNNINGHAM: I do.

Mr. OVERALL: We object to it. The answer sets up this suit
471 and then the answer says the defendant avers that neither the plaintiff nor any other person or corporate body from whom he received the coupons aforesaid ever became the holder thereof by giving any specified consideration, and that no individual or corporate body ever paid any valuable consideration to anybody for either of said coupons or printed bonds to which they were originally annexed. Now, we contend that the gentleman cannot introduce the record in this suit, or any other record tending to establish the invalidity of these bonds until he has first proven these witnesses have sworn falsely.

The COURT: He has the right to go into that matter.

Mr. CUNNINGHAM: Your honor admits this?

The COURT: Certainly.

Mr. CUNNINGHAM: Shall I read it?

The COURT: Oh, no; we all know what it was.

Mr. OVERALL: We except to the ruling of the court.

The COURT: What is the date of that judgment?

Mr. CUNNINGHAM: The judgment was in the November term, 1874; the suit was filed the 11th of September, 1871; it remained in court three years, and ultimately reached that judgment.

Mr. OVERALL: What is the date of the judgment?

Mr. CUNNINGHAM: Second of June, 1874. Now, I offer in evidence a transcript of the record of the supreme court of the State of Missouri in that case showing that they affirmed this judgment in the same manner.

Said transcript is in the words and figures following, to wit:

472 STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 28th day of October, A. D. 1874, there was filed in the office of the clerk of the supreme court of said State a transcript, which is in words and figures as follows, to wit:

Transcript.

THE STATE OF MISSOURI, *ss:*

The State of Missouri to the judge of the sixteenth judicial circuit, in said State, Greeting:

Whereas in the record and proceedings in a certain cause lately pending in the circuit court of Shelby county, wherein Levi J. Wagner, Jacob M. Johnson, Charles Folker, James M. Gordon, and Joseph Sparks are plaintiffs and Charles Mety, James S. Fullerton, William Dawson, David *by* Cooper, and James E. Marquis are de-

fendants in a civil action, manifest error hath intervened, to the great damage of the said defendants, as by their complaint we are informed:

Now we, being willing that the error, if any there be, should be corrected and full and speedy justice done to the parties aforesaid in that behalf, command you that you send to us, certified under your seal, the record and proceedings in the cause aforesaid as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held at the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March next, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein for correcting the error what of right and according to law ought to be done; and have you then and there this writ.

473 Witness Josiah Thornburgh, clerk of our said supreme court, at office, in the city of St. Louis, the 21st day of October, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] J. THORNBURGH, *Clerk.*

STATE OF MISSOURI, } ss:
County of Shelby, }

I, Leonard Dobbin, clerk of the circuit court within and for the county aforesaid, in obedience to the mandate of the within writ, herewith transmit to the honorable supreme court of the State of Missouri a full, true, and complete transcript of the record and proceedings in the within-entitled cause as fully as the same remain of record in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the town of Shelbyville, this 26th day of October, 1874.

[SEAL.] LEONARD DOBBIN, *Clerk.*

STATE OF MISSOURI, } ss:
County of Scotland, }

Be it remembered that heretofore, to wit, on the 11th day of September, A. D. 1871, there was filed in the office of the clerk of the circuit court of said county of Scotland a petition; which said petition is in words and figures as follows, to wit:

Petition.

In the Circuit Court of Scotland County.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, & JOSEPH SPARKS, Plaintiffs,

against

CHARLES METY, JAMES S. FULLERTON, WILLIAM DAWSON,
474 David B. Cooper, & James E. Marquis, Defendants, Missouri, I. and Nebraska Railway Company.

Injunction.

To the Hon. Elias V. Wilson, judge of the circuit court of Scotland county, in the fourth judicial circuit and of the 4th judicial circuit court, in the State of Missouri:

Plaintiffs state that they are residents and tax-payers & citizens of Scotland county, Missouri; that on the 9th day of August, A. D. 1870, the defendants, William Dawson, David B. Cooper, and James E. Marquis, were justices of the county court of Scotland county, Missouri, duly commissioned and qualified and acting as such, and that on the said day and year aforesaid, while sitting as the county court of said county of Scotland, they, the said justices, then and there unlawfully and without authority of law did make and cause to be entered of record the following illegal and unlawful order, to wit:

"At this day a petition was presented to the court signed by Charles Mety, H. H. Dowling, H. H. Montgomery, David Guynne, R. P. Wagland, and divers other persons, to the number of thirteen hundred and sixty-five, tax-payers & residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock in the Missouri, Iowa and Nebraska Railway Company, payable in county bonds due twenty-five years from date, bearing interest from date at the rate of eight per cent. per annum, payable annually, commencing from date of compliance of contract on the part of the company of said railway: Now, therefore, in consideration of the prayer of the petitioners and in pursuance and by virtue
475 of law and the power therein given to the court to subscribe stock in said railway company, it is ordered by the court that the County of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars capital stock of the Missouri, Iowa and Nebraska Railway Company, payable in the bonds of said county of the denomination of one thousand dollars each, due twenty-five years from the date of issue and bearing eight per cent. interest per annum, the interest payable annually in the city of New York on the terms and conditions following, to wit: One hundred thousand dollars of said bonds to be delivered to said company when said road shall have been graded, bridged, and tied and the track laid and the cars running thereon from Alexandria, Missouri, to a permanent depot located within one-half mile of the court-

house in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have then completed the said line of road from Memphis to the western north line of said county and the cars are running over the same through said county, provided said railway shall be so located as to miss the western and strike the north line of said county; it shall do as at a point not exceeding four miles east of the northwest corner of said county; said railroad shall be so built and the cars running thereon as aforesaid within two years from the date of this order, otherwise this subscription shall be null and void; and it is ordered further that Henry M. Glorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company, to represent said county at the meetings of the stockholders of said company, to cast the vote of said *company* and receive its dividends, and in order that the interest of the people may
476 be fully guarded, the court doth appoint as trustee Charles Mety, of said county, whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the abovementioned bonds as soon as the same are issued and to have custody of the same, and as soon as the said railway company shall have complied with the stipulations above set forth the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company, and shall at the same time receive from said treasurer or other agent of said company an equal amount in certificates of stock of the said railway company, which said certificate of stock the said trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his action, shall be presented to the county court at the next meeting thereafter; and that said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security to be approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trust. It is further ordered by the court that the county attorney for said county shall proceed to have said bonds printed or lithographed, & that the presiding justice of the county court of said county shall sign the same, and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annual coupons attached, and the trustee aforesaid shall when he delivers said bonds to said railway company detach any or all coupons for interest that may have past maturity, and cancel and return the same to the treasurer of said county when his re-
477 port as aforesaid is made, and shall enter upon the next maturing coupon on said bonds the date of delivery to said company in order that said company shall receive interest only from the date they are entitled to receive said bonds. It is provided further that said railway company shall pay all the expenses of lithographing and printing said bonds."

Plaintiffs further state that said county justices, sitting as a court, illegally and without the authority of law, on the day and year

aforesaid, appointed the said Henry M. Glovin agent for said county of Scotland to subscribe said stock of said county upon the books of said railway company and illegally, by and without the authority of law, authorized said Glovin to represent said county at the meeting of the stockholders of said company, and illegally and without the authority of law authorized said Glovin to cast the vote of said county and receive the dividends, and illegally and without the authority of law appointed the defendant, Charles Mety, trustee to receive said bonds, and illegally and without the authority of law directed him to receive said bonds per the clerk of the county court of Scotland county aforesaid as soon as the same were issued, and illegally and without authority of law authorized him to have the custody of said bonds, and illegally and without the authority of law authorized the said Mety to deliver said bonds to said railway company, and all other powers conferred upon said Mety by the said county justices setting as a court illegally and without the authority of law, and that the said justices setting as a court on the day and year aforesaid illegally add without the authority of law subscribed two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company, and ille-
478 gally and without the authority of law ordered and authorized the county attorney of said county of Scotland to have said bonds printed or lithographed, and illegally and without the authority of law ordered and authorized the presiding justice of the county court of said county to sign said bonds, illegally and without the authority of law ordered and authorized the clerk of the county court of said county to make the proper attestation of his signature; and plaintiffs further charge that all other acts of the said justices, sitting as a court, of and concerning the subscription to the capital stock of said railway company, were wholly illegal and without the authority of law.

Plaintiffs further state — afterwards, to wit, on the — day of ——, 1870, the said county justices, sitting as a court, illegally and without the authority of law, caused said bonds to be issued, printed, lithographed, and signed by the presiding justice of the county court of said county, and illegally and without the authority of law caused the same to be delivered into the possession of the defendant, Charles Mety. Pl'ffs now state that def't Mety now has said bonds in his possession and in his care and custody and under his control, to be delivered to said company or its lawfully authorized agents or its assigns upon the said company complying with the terms, stipulations, & conditions in the said illegal order of the county court aforesaid.

Plaintiffs state that said railroad company have located the line of their road within one-half mile of the court-house in said county of Scotland, and that the same has been graded, bridged, and
479 tied and the track laid from said town of Alexandria to within some five to eight miles of said court-house, and the work still progressing thereon to completion on some line or route from said court-house aforesaid unknown to pl'ffs.

Plaintiffs say that said company has permanently located a depot

on said line within one-half mile of said court-house, and that said road is graded, bridged, & tied and track laid to within some five or eight miles of the place at which said depot is so located as aforesaid, and that if the laying of the track of said road progresses as it has been doing for a few months past it will be but a few weeks before it reaches the depot location as aforesaid. Plaintiffs now aver & charge that the said railway company has no power or authority under its charters or articles of association or consolidation or under the laws of the State to locate and build its road from Alexandria aforesaid by way of court-house or upon the line aforesaid, and that its location within one-half mile of the court-house aforesaid and upon its said line and the building of said road is without warrant or authority of law, and the subscription by the court aforesaid or agent thereof to said company for stock as aforesaid is null and void. Plaintiffs aver & state that said Mety is now ready to deliver one hundred thousand dollars of said bonds so as aforesaid delivered to him upon the completion of said road to the depot location as aforesaid the said railroad company or assigns and intends so to do.

Pl'ffs aver & further state that if said bonds shall be so delivered that it is the intention of said company to assign & transfer them to innocent purchasers to raise money to pay for work, &c., done
480 & performed in, on, & about said road, and that as citizens & tax-payers as aforesaid they will suffer great wrong and unrepairable injury and damage thereby.

Whereupon pl'ffs pray that said Mety be restrained & enjoined from the delivery of said bonds or coupons, or by part thereof, to said company, or any other company, party, or person, and that upon a final hearing of this cause he be required to deliver the same in court here to be canceled, and that this court do cancel the same; and that said justices of the county court aforesaid be restrained & enjoined from appointing any further persons or agents for said county of Scotland to have or possess said bonds or coupons or to act in the board of said railroad company, and that said Fullerton be restrained & enjoined from paying said bond or coupons or any part thereof out of any money belonging to said county of Scotland which he holds or may hold as treasurer thereof.

L. J. WAGNER.

BLAIR, ANDERSON, HILLIS & CONRAD,
Att'ys for Pl'ffs.

Levi J. Wagner, one of the plaintiffs, makes oath and says that the matters & things set forth in above petition are true to the best of his knowledge and belief.

L. J. WAGNER.

Subscribed & sworn to before me this 7th of Sept., 1871.
THOS. B. JEFRIES, *Clerk.*

Filed Sept. 11th, 1871.
CHAS. S. MARTIN, *Clerk.*

And afterwards, to wit, on the 3rd day of October, A. D. 1871, at a circuit court continued and held at the court-house, in the town of Memphis, in said county, before Hon. E. V. Wilson, judge,
481 the following, among other, proceedings were had, to wit:

Motion — Forrister.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, and JOSEPH SPARKS, Plaintiffs,

against

CHARLES METY, JAMES S. FULLERTON, WILLIAM DAWSON, DAVID B. COOPER, and JAMES E. MARQUIS, Defendants.

Petition for injunction.

Now come George Forrister and Washington Forrester, by their attorney, Edwin G. Pratt, and file herein their motion, which motion is as follows, to wit:

Injunction.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

George Forrister and George Washington Forrister come and suggest to the court that they are informed that they are parties to a bond in accordance given in case an injunction be granted in the above cause; they aver that said bond was prepared, as they supposed, for costs and expenses upon an application for injunction against Charles Mety *et al.*, at the circuit court of Lewis Co., in September; they aver that they have not consented to join in any bond to be given in the above-entitled cause in case an injunction be granted, and they ask to be discharged, and that the bond was not given by them for the purposes of this cause, nor will they join therein to restrain defendants according to the prayer of the bill, and they ask the protection of the court in the premises.

EDWIN G. PRATT,
Att'y for George Forrister, George W. Forrister.

482 Filed Oct. 3rd, 1871.

C. S. MARTIN, *Clerk.*

And afterwards, to wit, on the 4th day of October, A. D. 1871, at a circuit court continued and held at the court-house in the town of Memphis, in said county of Scotland, before Hon. E. V. Wilson, judge, the following, among other, proceedings were had, to wit:

Injunction.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Now comes William Searight, by his attorneys, Birch & Mackey, and files herein his motion, which said motion, is as follows, to wit:

Motion of Searight.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Injunction.

William Searight comes and suggests to the court that he is informed that he is a party to a bond in accordance to law in case an injunction be granted in the above cause; he avers that said bond was prepared, as he supposed, for costs & expenses *when* an application for injunction against Charles Mety *et al.*, at the circuit court of Lewis county, in September; he avers that he has not consented to join in any bond to be given in the above-entitled cause in case an injunction be granted, and he asks to be discharged, & that the bond was not given by him for the purpose of this cause, nor will he join therein to restrain the def'ts according to the prayer of the petition, and he asks the protection of the court in the premises.

483 BIRCH & MACKEY,
For Searight.

Filed Oct. 4th, 1871.

CHAS. S. MARTIN, *Clk.*

And afterwards, at the same term of court, to wit, October term, A. D. 1871, and on the 12th day of said month, the following, among other, proceedings were had, to wit:

Continuance. Injunction.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, & JAMES M. GORDON and JOSEPH SPARKS, Plaintiffs,

vs.

CHARLES METY, JAMES S. FULLERTON, WILLIAM DAWSON, DAVID B. COOPER, and JAMES E. MARQUIS, Defendants.

Now, at this day, come the said plaintiffs, by their said attorney, and move the court for leave to file herein their amended petition in this cause sixty days before the next term of this court; and, there appearing no objection thereto, said motion is granted and said cause continued.

And afterwards, to wit, on the 28th day of August, A. D. 1872, at a circuit court continued and held at the court-house in the town of Memphis, in said county of Scotland, before the Hon. E. V. Wilson, the following, among other, proceedings were had, to wit:

Continuance. Injunction.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Now, at this day, this cause *coming* on to be heard, and there-
484 upon came the said parties, by their respective attorneys; and thereupon, on motion of said plaintiffs, leave is granted them to file amended petition herein *instanter*; amended petition there-

upon filed by said plaintiffs, to all of which defendants except and pray that their exceptions may be noted, which is accordingly done and this cause continued until the next term of this court.

Copy of the Amended Petition.

In the Scotland County Circuit Court, Missouri.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, and JOSEPH SPARKS, Plaintiffs,

against

MISSOURI, IOWA & NEBRASKA RAILWAY COMPANY, CHARLES METY, James S. Fullerton, William Dawson, David B. Cooper, and James E. Marquis, Defendants.

Plaintiffs, by way of amendment to their original petition herein, state that by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 28th, 1857, the Alexandria & Bloomfield Railroad Company was chartered and incorporated; that by such charter said company was authorized to survey, mark, locate, & construct a railroad from the city of Alexandria, in the county of Clarke, in the State of Missouri, in the direction of Bloomfield, in the State of Iowa, to such point on the northern boundary line in the State of Missouri as shall be agreed upon by said company and a company authorized on the part of the State of Iowa to construct a railroad to intersect the road authorized to be
485 constructed by the provisions of this act at the most practicable point on said State line. Plaintiffs state that said Alexandria and Bloomfield Railroad Company was duly organized in the year A. D. 1864 & existed under the name & style of "The Alexandria and Bloomfield Railroad Company" until the day of the date hereinafter mentioned. Plaintiffs state that the General Assembly of the State of Missouri afterwards, to wit, on the 19th day of February, 1866, passed an act entitled "An act to amend an act entitled — to incorporate the Alexandria and Bloomfield Railroad Company, approved Aug. 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, Atchison county, Missouri, and also authorizing said company to accept all or any of the sections of this act, the same to be binding on said railroad company," which was duly approved on February the 19th, 1866. Plaintiffs state that said company soon thereafter adopted the first section and no other of said last-named act, and from thenceforward said Alexandria & Bloomfield Railroad Company took, used, and was known by the name of the "Alexandria & the Nebraska Railroad Company" up to the date hereinafter named, viz., May 2nd, A. D. 1870, and did proceed to survey, mark, & locate the line of their said road and did permanently locate the same, commencing at the said town of Alexandria

and running thence westerly to the town of Luray, in said county of Clarke; thence in a northwesterly direction up the divide between the waters of the Wyconda & the Little Fox rivers, crossing the line between Scotland & Clarke counties about five miles south of the Iowa and Missouri line; thence in the
486 direction of Bloomfield aforesaid through said Scotland county, striking said Missouri and Iowa line some ten miles east of the northwest corner of said Scotland county, the greater portion of which said line from Luray to the State line as aforesaid was graded by said company. Plaintiffs state that prior to the 2d day of May, A. D. 1870, a railroad company was formed, organized, and incorporated under the laws of and in the State of Iowa under the name and style of "The Iowa Southern Railway Company" for the purpose of building a railroad in said State to the Missouri & Iowa State line, and continued to exist and be in full force until the 2d day of May, A. D. 1870, when it was consolidated with the said Alexandria & the Nebraska City Railroad Company, as hereinafter stated.

Plaintiffs further state that afterwards, to wit, on the 26th day of March, A. D. 1870, the said Alexandria & the Nebraska City Railroad Company and the said Iowa Southern Railway Company did, by their certain written articles — agreement and association by the president & directors of said companies respectively signed, unite said companies into one company & consolidate the capital stock thereof upon the terms & stipulations therein set out and named, a duly certified copy of which is herewith filed as Exhibit "A."

Plaintiffs state that the terms and provisions of said consolidation were, by the holders of a majority of the capital stock in said Iowa and Southern Railway Company on the 23d day of April, A. D. 1870, and by the holders of a majority of the capital stock in the Alexandria & Nebraska Railroad Company on the 2d day of May, 1870, duly appointed, as will appear by certificates of the secretaries of said companies respectively attached to said articles of consolidation.

487 Plaintiffs state that by the said articles — consolidation it was stipulated and agreed between said companies that the name of said consolidated company shall be "The Missouri, Iowa & Nebraska Railway Company," which pl'ffs aver is now its name.

Plaintiffs further state that by the thirteenth article of consolidation aforesaid it is stipulated & agreed as follows: The line of the consolidated railway shall extend continuously from the city of Alexandria, Clarke county, Missouri, on the Mississippi river, its eastern terminus, as the same is now located and partially graded to Centerville, in Appanoose county, Iowa, thence west to the Missouri river, as contemplated by the charter of the Iowa Southern Railway Company, and the said consolidated company shall complete & put in operation said line of railway from the city of Alexandria, Missouri, to Centerville, Iowa, and from thence westward to the Missouri river as soon as practicable, and shall continue to maintain & operate said railway as a first-class road at, from, and

between the said termini throughout its entire length during the corporate existence of the said consolidated company.

Plaintiffs aver and charge that the line of said road referred to in said article thirteen as located and partially graded was and is the same line so as aforesaid surveyed, marked out, and located by the said Alexandria and the Nebraska City Railroad Company in a northwesterly direction to Iowa & Missouri line from Luray as aforesaid, and the grading upon which had been done by said company the greater portion of the way from Alexandria to Luray and from Luray to the Scotland county line aforesaid *had* the greater portion of the way from said Scotland & Clarke county line as aforesaid.

488 Plaintiffs state that on the 9th day of August, A. D. 1870, the defendants, Dawson, Cooper, & Marquis, were and at the institution of this suit were and now are the justices of the county court for said county of Scotland, in the State of Missouri, duly commissioned and qualified, and that on said day whilst as the county court for said county of Scotland made & caused to be entered of record in said court the following order & proceedings, viz: At this day a petition was presented to the court signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Guynne, R. P. Wayland, and divers other persons to the number of thirteen hundred & sixty-five taxpayers and residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock to the Missouri, Iowa & Nebraska Railway Company, payable in county bonds, due twenty-five years from date, bearing interest at the rate of eight per cent. per annum, the interest payable semi-annually, commencing from date of completion and of contract on the part of said railway company. Now, therefore, in consideration of the prayer of the petitioners and in pursuance & by virtue of law & the power that is given to the court to subscribe stock in said railway company, it is ordered by the court that the county of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars to the capital stock of the Missouri, Iowa & Nebraska Railway Company, payable in the bonds of said county, of the denomination of one thousand dollars each, due twenty-five years from the date of issue, and bearing eight per cent. per annum, the interest payable annually in the city of New York on the terms and conditions following, to wit: One hundred thousand dollars of said bonds to be deliv-

489 ered to said railway company when said road shall have been graded, bridged, & tied & the track laid & the cars running through from Alexandria, Missouri, to a permanent depot located *in* one-half mile of the court-house in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have completed their said line of road from Memphis to the west or north line of said county & and the cars running over the same through said county. Provided the said railroad shall be so located as to miss the west line and strike the north line of said county it shall do so at a point not exceeding four miles east of the northwest corner of said county. Said railroad shall be so built & the cars running through

as aforesaid within two years from the date of this order; otherwise this subscription shall be null and void; and it is ordered further that Henry M. Glorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company; to represent said county at the meetings of the stockholders of said company; to cast the vote of said county, & receive the dividends, and in order that the interests of the people may be fully guarded the court doth appoint as trustee Charles Mety, of said county, whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued, and to have the custody of the same, and as soon as the said railroad company shall have complied with the stipulations above set forth the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company, and shall at the same time receive from said treasurer or the agent of said
490 company an equal amount in certificates of stock of said railway company, which said certificates of stock the same trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his actions, shall be presented to the county court at the next meeting thereafter, and that said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security, to be approved by the county court of said county, for the safe keeping of said bonds & the faithful performance of said trustee. It is further ordered by the court that the county attorney of said county shall proceed to have said bonds printed or lithographed, and that the presiding justice of the county court of said county shall sign the same, and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annual coupons attached, and the trustee aforesaid shall, when he delivers said bonds to said railway company, detach all, any, or all coupons for interest that may have passed maturity, & cancel & return the same to the treasurer of said county when his report as aforesaid is made, and shall enter upon the next maturing coupon of said bonds the date of delivery to said company in order that said company shall receive interest only from the date they are entitled to receive said bonds. It is provided further that said railway shall — all the expenses of lithographing & printing said bonds. Plaintiffs say that said court did, soon after the date of said order & before the institution of this suit, subscribe for two hundred thousand dollars stock in the Missouri, Iowa & Nebraska Railway Company for and on
491 behalf of said county of Scotland, and that said Glorin, in pursuance to said order, did, soon after the date of said order & before the institution of this suit, enter said subscription upon the books of said company, according to & subject to the conditions in the said order made. Plaintiffs state that the said bonds & coupons were lithographed and printed, as ordered and directed in the order aforesaid, and were to the amount of two hundred thousand dollars, with coupons attached, deposited with def't Mety, who, on the 12th

day of September, A. D. 1871, & at the institution of this suit, held the same, duly signed by the presiding justice of said court and the clerk thereof, as prescribed and directed in the said order of the said court; the whole of which order & proceedings & every act, order, or part thereof by the said county court, as all the acts of said Glorin in entering said subscription in the books of said company, pl'ffs aver, were done without warrant or authority of law. Plaintiffs say that said Missouri, Iowa & Nebraska Railroad Company, without warrant or authority of law, previous to the institution of this suit, abandoned the line of their said road located & partly graded as aforesaid in the direction of Bloomfield, Iowa, by said Alexandria & Nebraska City Railroad Company as aforesaid, & as agreed upon & located by the said Iowa Southern Railway Company and the said Alexandria & Nebraska City Railway Company in their articles of consolidation aforesaid; and without warrant or authority of law, in pursuance of the terms, stipulations, and conditions in the said illegal order & proceedings of the county court aforesaid & previous to the institution of this suit, changed the line of their said road as located & partly graded from Alexandria to Bloomfield aforesaid, and located the same so as to run from the town of Luray aforesaid by way of Memphis, in the county of Scotland aforesaid, to Lancaster, in Schuyler county aforesaid, and have located the line thereof within one-half mile of the court-house in said town of Memphis without warrant or authority of law. Plaintiffs say that on the 12th day of September, A. D. 1871, said company had said road graded, tied, bridged, and cars running thereon from said Alexandria to within two miles of the court-house in Memphis aforesaid, and that after institution of this suit it was finished and completed to within one-half mile of said court-house and a depot located permanently within one-half mile of said court-house, and the cars running on said road from Alexandria aforesaid to said depot location; all of which pl'ffs aver were done and performed without warrant or authority of law.

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Plaintiffs further aver and charge that it was, at the issuance of said bonds and at the institution of this suit, the object and intention of said county court and said railroad company to have the proceeds of the sale of said bonds applied to the payment of the work and labor done, paid, and performed upon the line of said road in Scotland county so as aforesaid illegally and without authority of law located by way of the town of Memphis and the court-house aforesaid, and that said bonds were issued by said county court and received by said commissioner for that purpose and no other, and was the sole consideration for the change of said route by way of Memphis aforesaid; and plaintiffs aver and charge that it was on the said 12th day of September, A. D. 1871, and at the institution of this suit was the intention of said def't Mety to deliver the one hundred thousand dollars of said bonds with coupons attached, as stipulated in the said illegal order of the said county court aforesaid, to the said Missouri, Iowa & Nebraska Railway Company or their agents or assigns, unless restrained by suit and injunction.

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Plaintiffs further aver and charge that two-thirds of the qualified voters of said county of Scotland had not at the time of said subscription for the capital stock of said company as aforesaid by said county court and said Glorin assented to said subscription at a regular or special election held therein, nor have they since so assented thereto. Plaintiffs say that def't Fullerton at the institution of this suit was and now is the treasurer of said county of Scotland duly commissioned and qualified. Plaintiffs state that the said justices of the county court aforesaid did at the institution of this suit and now intend, while sitting as a county court for Scotland county, to issue the bonds of said county of Scotland or levy a tax upon all property made taxable by law for county purposes in said county of Scotland, pl'ffs can't say which, to raise funds to pay the coupons attached to said bonds as they fall due; that said county court did at the institution of this suit and now intends to issue the bonds of said county of Scotland or levy a tax upon all property made taxable by law for county purposes in said county of Scotland, pl'ffs can't say which, to raise funds to pay off said bonds when due or the installments thereon which may be called for from time to time by the board of directors of said Missouri, Iowa & Nebraska Railway Company after said bonds shall have become due; which said money or funds so as aforesaid raised or collected to pay off said coupons or bonds will be paid into the treasury of said county and warrants drawn therefor on the treasurer of said county in favor of said railroad company or
494 their assigns; that said treasurer intends and his successors in office will pay off said warrants out of the funds collected as aforesaid, unless said bonds and coupons be delivered up and cancelled or payment thereof be restrained by injunction. Plaintiffs further state at the institution of this suit said railway company intended to assign and transfer said bonds and coupons to innocent purchasers as soon as they received the same to raise funds to pay for the work done and intended to be done in said Scotland county on the line of said road as located through the whole of said county of Scotland, on the route from Luray by way of Memphis as aforesaid. Plaintiffs state that said company had at the institution of this suit located the line of their said road from Memphis aforesaid a little north of west to the town of Lancaster, in Schuyler, Missouri, without warrant or authority of law; that said line as thus located from Luray by way of Memphis and Lancaster aforesaid does not run in the direction of said town of Bloomfield, in the State of Iowa aforesaid, from the town of Alexandria aforesaid; that it does not run upon the line nor to the point on the northern boundary line of the State of Missouri nor near the same agreed upon by the said Alexandria and the Nebraska City Railroad Company and the said Iowa Southern Railway Company declared and specified in their said articles of consolidation as aforesaid.

Plaintiffs further state that the line of said road as located by said company from the town of Luray aforesaid by way of Memphis & Lancaster as aforesaid is a change of the general route of the line of the road as agreed upon and set out by said consolidated com-

panies in their articles of consolidation and charter of the
495 said Alexandria and Bloomfield Railroad Company as aforesaid, and that said change was not made to shorten the line of said road or to overcome natural objections thereto or to secure economy in its construction; and pl'ffs further aver and charge that said line was not changed as aforesaid by a vote of two-thirds of the directors of said Missouri, Iowa and Nebraska Railway Company; and plaintiffs aver and charge that at the institution of this suit they were and now are citizens and resident tax-payers of Scotland county aforesaid, and are separately and respectively owners of a large amount of real estate and other property in said Scotland county taxable by the laws of the State of Missouri for county purposes and for paying for subscriptions by counties for stock in railroad companies in said State and for county purposes, and as such citizens their said property will be subject to be assessed and taxed to pay off and discharge said illegal bonds and coupons, unless the said bonds and coupons be delivered up and cancelled or the payment thereof be restrained and injoined.

Wherefore pl'ff prays that upon the final hearing of this cause said def't Mety be required to bring said bonds and coupons into this court and deliver the same to the clerk hereof, and that the court cancel the same or cause the same to be done; and that the order and proceedings of the county court aforesaid, and which are heretofore set out and recited, be declared null and void, and the said justices and their successors in office be forever restrained and enjoined from further proceedings in the premises or in relation to the payment of said bonds and coupons or any part thereof; and that said defendant Fullerton, as treasurer of said county of Scotland, and his successors in office be forever restrained and enjoined from paying off or paying any part of said bonds or coupons
496 or any bonds or coupons issued in lieu thereof or upon which money has been borrowed to pay off said bonds and coupons or any part thereof; and that said railroad company be restrained from recovering said bonds and coupons into its possession or the possession of its agents from said def't Mety or any other person acting for him or as the pretended agent of said county of Scotland.

ANDERSON & BLAIR,
Att'ys for Pl'ffs.

Filed August, 1872.

C. S. MARTIN, *Clerk.*

And afterwards, to wit, on the 23rd day of December, A. D. 1872, at a circuit court continued and held at the court-house, in the town of Memphis, Scotland county, Missouri, before Hon. E. V. Wilson, judge, the following, among other, proceedings were had, to wit:

Answer Filed.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Injunction.

On application of the defendants leave is hereby granted to file their answer to plaintiffs' amended petition 30 days before the next regular term of this court, to which time this cause is continued.

Copy of Def'ts' Answer.

In the Scotland County Circuit Court. April Term, A. D. 1873.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDEN, and JOSEPH SPARKS, Pl'ffs,

against

MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, CHARLES
497 Mety, James S. Fullerton, William Dawson, David B. Cooper, & James E. Marquis, Def'ts.

Now come the said defendants, and for answer to the petition of said plaintiffs herein, leave of the court for that purpose having been first had and obtained, say:

Defendants admit each and every allegation of said petition of said plaintiffs relative to the charter and organization of the Alexandria and Bloomfield Railroad Company, but defendants deny that there was ever, under or by virtue of said charter or under any other charter, any permanent location of the said Alexandria and Bloomfield railroad or the said Alexandria and Nebraska City railroad previous to the consolidation, as in said petition set forth, west or northwest of the town of Luray, in Clarke county, Missouri, aforesaid, in the articles indicated by said pl'ffs in their said petition herein. Defendants admit, as in the said petition of the said plaintiffs charged, the incorporation and (their) existence of the Iowa Southern Railroad Company, and that said company continued to be known as the "Iowa Southern Railroad Company" until the 2d day of May, A. D. 1870, when said railroad company was consolidated with the Alexandria and Nebraska City Railroad Company, when, upon said several acts, as in said petition more particulary set forth, to wit, the ratification of said several articles of consolidation by said Iowa Southern Railroad Company and said Alexandria and Nebraska City Railroad Company, the name was changed and said respective railroad companies became and were merged into the Missouri, Iowa & Nebraska Railway Company, now defendant; and that said acts of consolidation and the said several acts of ratification and approval by the said contracting parties to the said several articles of consolida-
498 tion, as in the said petition of the said plaintiffs more particularly set forth, defendants admit to be true; and defendants furthermore admit that by the terms of said article thirteen of said articles of consolidation, as in petition set forth, said consolidated

road, The Missouri, Iowa & Nebraska Railway Company, now defendant, was bound to construct and operate said road so constructed from Luray, in Clarke county, Missouri, as then located and partially graded, to Centerville, in Appanoose county, Iowa, thence west to the Missouri river, as contemplated by the charter of the Iowa Southern Railway Company, on the nearest and most practicable route; and that the said route, by way of Arbela and court-house in Memphis, in Scotland county, as the same is now contemplated, operated, owing to the shortness of the line thereof, economy of the construction, and the facility and productiveness of its operation, is the most practicable route between said points for the construction and operation of said railroad; and defendants specifically deny that said article thirteen of said articles of consolidation referred to or contemplated said northwesterly direction, as referred to in said petition of said plaintiffs herein; and defendants say and charge the fact to be that said route had long theretofore been abandoned, never having been permanently located as aforesaid from said town of Luray as aforesaid; thence, in a northwesterly direction, between the Wyconda and Fox rivers, and said route as now located, constructed, and operated from the town of Luray as aforesaid, thence westwardly, by way of Arbela & the court-house in Memphis as aforesaid, had been adopted, surveyed, and considerable work and labor done thereon at the time of said consolidation, and the route so last aforesaid partially constructed was & is the only rec-
499 ognized route of said railroad, to wit, The Alexandria & Nebraska City Railroad Company, and which, by operation of law and by the terms of said several articles of consolidation, together with all and singular the said several acts of said contracting companies in ratifying, approving, and confirming the same, became, was, and now is the only route and road of the said Missouri, Iowa, & Nebraska Railway, now defendant.

Defendants further state it is true, as alleged in plaintiff's petition, that upon the petition of citizens of Scotland county, Missouri, the said William Dawson, David B. Cooper, and James E. Marquis were then and afterwards and at the time of the filing of the plaintiff's said petition herein the duly elected, commissioned, and acting justices of the county court of said county of Scotland and State of Missouri, and while so sitting as said county court, and upon said petition of said citizens as aforesaid, made and entered upon the record of said county court as aforesaid the order and decree in said case, as in said petition of said plaintiffs in words and figures set forth, in that said court did soon after the date of said order and before the institution of this suit, by its duly appointed agents for that purpose, subscribe for said two hundred thousand dollars of stock in the said Missouri, Iowa & Nebraska Railway Company and enter said subscription upon the books of said company according to and in pursuance of said terms of said order of said county court; that said bonds, with interest coupons attached to each of them, were issued as in said order named, were duly signed by the presiding officer and clerk of said court, and placed in the hands of Charles Mety, Esq., def't, the trustee in said order made; but defend-

ants say that they have no knowledge or information sufficient to form a belief as to where said bonds were at the time of the institution of this suit. Defendants respectfully deny that the whole of said order and proceedings and every act, order, or part thereof by the said county court, as also the act of the said Glorin in subscribing said subscription in the books of said company, were done without warrant or authority of law. Defendants further deny that said Missouri, Iowa and Nebraska Railroad Company, without warrant or authority of law, previous to the institution of this suit, abandoned the line of their said road, located as aforesaid in the direction of Bloomfield, Iowa, as aforesaid, or that said route is in the direction of Bloomfield, was agreed upon and adopted by the said Iowa Southern Railroad Company and the said Alexandria & Nebraska City Railroad Company, the contracting parties, in their said articles of consolidation, or that the same was done without warrant or authority of law, or that the same was done in pursuance of the terms, stipulations, and conditions of said order of said Scotland county court, or of the proceedings of the said county court or any of them were done or had for that purpose or in pursuance thereof, or that previous to the institution of this suit or at any time said defendants changed the line of their said railway, as in said petition described, so as to change the general direction of said road in any particular than as the same was contemplated and stipulated in said thirteenth article of the said articles of consolidation; and def'ts aver that the line and general direction of said railroad through the said county of Scotland and State of Missouri is as was contemplated in part by said contracting parties previous to, at the time of, and ever since the adoption and ratification of said articles of consolidation by said companies; that the said route had been surveyed, located, & partially — (from a point at or near the said town of Luray, in Clarke county, Missouri, in a westerly direction to the town of Arbela, in Scotland county, Missouri, being in the same general direction of the town of Memphis and almost on the identical ground on which defendants have since built and are now operating said railroad by way of Memphis to Centerville, in Appanoose county, Iowa, the terminus prescribed in said article 13 of the said articles of consolidation) previous to the said 2nd day of May, A. D. 1870, — time of said consolidation, and after the abandonment of the said northwesterly line described by said plaintiffs in their said petition, and that said northwesterly line so described by plaintiffs was not and could not have been the route contemplated, if any special route was so by said contracting parties contemplated, in said thirteenth article of said contract of consolidation. Defendants specifically deny that it was the object and only object of said county court, at the time — issuance of said bonds and at the institution of this suit, that said railroad company were to have the proceeds of the sale of said bonds applied to the payment of work and labor done, had, and performed upon the line of said road in Scotland county, as said plaintiffs charged, illegally and without authority of law located by way of the town of Memphis and court-house afore-

said, or that said bonds were issued by said county court and received by said company for that purpose and no other, or that the same was the sale or any part of the consideration for the change of said route by way of Memphis as aforesaid.

Defendants further say that it is true that two-thirds of the
502 legal and qualified voters of said county of Scotland had not at the time of said subscription nor have they ever since assented thereto at a regular or special election had therein for that purpose, but defendants say that at the time the petition was filed and at the time said order was made by said county court (in said petition of plaintiffs recited) the same was all done under and by virtue of an act of the Legislature of the State of Missouri incorporating the Alexandria & Bloomfield Railroad Company, approved February 9th, 1857, granting, by the provisions of section ten thereof, to said Alexandria & Bloomfield Railroad Company the *proceedings*, rights, and immunities which were granted by the Legislature to the North Missouri Railroad Company by an act entitled An act to incorporate the North Missouri Railroad Company, approved March 3rd, 1851, and by the 12th section thereof exempting the stockholders of said Alexandria & Bloomfield railroad from the operations of sections nine and ten of the act entitled An act to authorize the formation of railroad associations and to regulate the same, approved December 13th, 1855; and defendants say that by the provisions of said section fourteen (14) of the act of the General Assembly of the State of Missouri, approved March 3rd, 1851, and entitled, as aforesaid, "An act to incorporate the North Missouri railroad," and which were part of the privileges, rights, and immunities of the said Alexandria & Bloomfield railroad as aforesaid, it was provided as follows, to wit:

It shall be lawful for the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said company, and it may invest its funds in the stock
503 of said company & issue the bonds of said county to raise the funds to pay the stock thus subscribed and to take all proper steps to protect the interest and credit of said county, such county court may appoint an agent to represent the county, vote for it, and receive its dividends, and any incorporated city, town, or incorporated company may subscribe to the stock of said railroad company and appoint an agent to represent its interests, give its vote, and receive its demands, and may take proper steps to guard and protect the interest in (of) such city, town, or corporation." And defendants say that all said rights, privileges, and immunities so granted as aforesaid to said North Missouri Railroad Co. and by said act of the Legislature, approved as aforesaid February 9th, 1857, incorporating and transmitting to the Alexandria & Bloomfield Railroad Company the same privileges and immunities, and the said acts and articles of consolidation so as aforesaid ratified, approved, and confirmed, transmitted to, and reposed in the said Missouri, Iowa & Nebraska Railway Company as fully and entirely as the same was by said Legislature vested in said North Missouri Railroad Company all the rights, privileges, and immunities vested, created, and perpetuated in said section 14 of said act approved March 3rd, 1851;

and defendants say that under and by virtue of the powers, privileges, and immunities all and singular said acts of said citizens and voters said county court, said agent, and justice was fully authorized by law in the premises. Defendants further state that the said route in a westerly direction from the town of Luray as aforesaid by way of Memphis was adopted because chiefly of its economy in construction and successful operation by overcoming natural objections in
in point of business, location, and otherwise, and that said
504 direction of said railroad had been adopted by and partially
graded and constructed under the original organization prior to the said consolidation, and the said westerly route last adopted and partially constructed was the one contemplated in said articles of consolidation and the subsequent solemn ratification of said consolidated companies, intent and understanding of said parties, and by the language of said 13th article adopted, ratified, and intended said last-described route so far as the same had — that time been permanently located to Luray, in Clarke county, as aforesaid; thence by the nearest and most practicable route to Centerville, in Appanoose county, Iowa, as the route for said railroad, and is the one upon which the same is now operated. Defendants, further answering, say that plaintiffs, although citizens of said county of Scotland, have no rights as such individuals for the remedies they seek to obtain in their said bill and petition, and ought not, therefore, maintain their action herein; that said two hundred thousand dollars of bonds, with the unpaid coupons thereto, respectively, attached and made part thereof, and only part of which are now past due, have all been (in pursuance of said petition of said citizens so presented to said court as aforesaid, and the subsequent action of said county court then & thereafter made in that regard, of the said completion and operation of the said road of said Missouri, Iowa and Nebraska Railway Company as stipulated in said order and proceedings of said county court and the statute in such case made and provided) surrendered to said Missouri, Iowa and Nebraska Railway Company by defendant, Charles Mety, trustee as aforesaid; that said bonds, as defendants believe, have all been hypothecated and sold to and
are held by parties to the defendants now unknown; that all
505 and singular the actions, orders, decrees, construction, operation, and hypothecation & sale of said bonds and coupons are and have been done by defendants and each of them in good faith; and defendants, having fully answered, pray to be dismissed with costs.

BIRCH & MACKERY,
For Defendants.

Filed March 21st, 1873.

CHAS. S. MARTIN, *Clerk.*

And afterwards, to wit, on the 22d day of April, A. D. 1873, at a circuit court continued and held at the court-house, in the town of Memphis, in said county, before Hon. E. V. Wilson, judge, the following, among other, proceedings were had, to wit:

Appeal for Change.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Injunction.

At this day comes the said plaintiffs, by their attorneys, and file their application for a change of venue in this cause, which application is heard by the court.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Injunction.

At this day comes said parties, by their attorneys, and the application for a change of venue coming on to be heard, on motion the same is submitted to the court, and the court, after hearing said application, doth award a change of venue of this cause to Shelby county. It is, therefore, ordered by the court that the venue of this cause be awarded to the county of Shelby; and it is further ordered that the clerk hereof make out a full, true, and complete
506 transcript of the record and proceedings had in this court in relation to this cause and transmit the same, duly certified, together with all the original papers in this cause and not forming a part of the record hereof, to the clerk of the circuit court of said county of Shelby, in the State of Missouri.

STATE OF MISSOURI, } *ss:*
County of Scotland, }

I, Charles S. Martin, clerk of the circuit court within and for said county of Scotland, do certify that the above and foregoing pages contain a full, true, and complete transcript of the record and proceedings had in this court in relation to the above cause entitled Levi J. Wagner *et al.* against Charles Mety *et al.*, as fully and completely as the same appears of record and on file in my said office.

In witness whereof I have hereunto set my hand and the seal of said court. Done at my office in Memphis, at the county aforesaid, on the 24th day of May, A. D. 1873.

[SEAL.] CHARLES S. MARTIN, *Clerk.*

Bill of Costs.

Chas. S. Martin, clerk	$11 51	*pf.* by pl'ffs.
Wm. D. Sigler, sheriff	6 45	
C. S. Baker, "	3 50	
George Ellis, notary public	3 00	

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And afterwards, to wit, on the 26th day of November, A. D. 1873, in the Shelby county circuit court, before his honor, John T. Redd, the following, among other, proceedings were had, to wit:

Continuance.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Now, at this day, come the parties to this cause, by their att'ys. Whereupon, by agreement, this cause is continued.

And afterwards, to wit, on the 26th day of May, A. D. 1874, at a circuit court continued and held at the court-house, in the town of Shelbyville, Shelby county, Mo., before the Hon. John T. Redd, judge, the following, among other, proceedings were had, to wit:

Demurrer Filed.

LEVI J. WAGNER *et al. vs.* CHARLES METY *et al.*

Now, at this day, come the parties, by their att'ys. On motion of def'ts att'y, it is ordered by the court that he have leave to withdraw his answer filed in this cause. Whereupon def'ts file their demurrer to pl'ffs' amended petition; after being considered by the court — is taken under advisement.

508 *Copy of Demurrer.*

In the Circuit Court of Shelby County, upon Change of Venue from the Circuit Court of Scotland County, Missouri.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, and JOSEPH SPARKS, Plaintiffs,

vs.

MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, CHARLES METY, James S. Fullerton, William Dawson, David B. Cooper, James E. Morgan, Defendants.

The Defendant, The Missouri, Iowa and Nebraska Railway Company, for itself demurs to the plaintiffs' petition for the following grounds of objection, to wit:

First. The said petition does not state facts sufficient to constitute a cause of action, in this—

1st. That by pleading the charter of the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, the petition brings to the notice of this court all the provisions of said charter as contained in said act entitled An act to incorporate the Alexandria and Bloomfield railroad aforesaid, as also all the provisions of an act entitled An act to incorporate the North Missouri Railroad Company, approved March 3rd, 1851, so far as the same are applicable to said Alexandria and Bloomfield Railroad, agreeably to the 10th section of the said act incorporating said Alexandria & Bloomfield Railroad Co., whereby the county court of Scotland county was authorized to make the subscription to the stock of said Alexandria & Bloomfield Railroad.

2d. By pleading the act of the General Assembly of the State of Missouri, approved February 19th, 1866, and the action of the Alexandria & Bloomfield Railroad Company thereunder the plain-
509 tiff shows to the court that the name of said company was properly and lawfully changed to and became the Alexandria and Nebraska City Railroad Company.

3rd. By pleading the fact of consolidation of the said Alexandria and Nebraska City railroad with the Iowa Southern Railroad Company under the name of the Missouri, Iowa and Nebraska Railway Company the plaintiffs show that said consolidation was lawfully made, and that the Missouri, Iowa and Nebraska Railroad Company was and is the lawful name of said consolidated company, and that all the rights, privileges, and immunities conferred upon the said Alexandria and Bloomfield Railroad Company by its said charter, including the right of the said county court to subscribe to the capital stock thereof, passed to and vested "*Eo vestigo tempore*" in the said Missouri, Iowa, and Nebraska Railway Company.

4th. It does not state any facts from which it appears that the subscription made, as the same is in said petition alleged to have been made, by said county court to the capital stock of said Missouri, Iowa and Nebraska Railway Company was unlawful.

5th. It does not state any facts showing that the alleged abandonment of the line of said railroad and the adoption of a new route and the locating and constructing the road thereon as the same is set out and pleaded in said petition was without authority of law and was or is illegal.

6th. It does not state any fact to show any interest in the plaintiff which entitled them to call in question the lawfulness or unlawfulness of the abandonment of said first adopted route and the adoption of said last-named route, nor does it state any facts
510 to show that such change in any manner affects the interest of the said plaintiffs or of said county of Scotland injuriously, nor that said alleged change of route in any manner affects the lawful character of said subscription, as alleged to have been made. 2d. Said petition contains no equity entitling the pl'ffs to the relief prayed for or to any relief in the premises.

A. J. BAKER &
F. T. HUGHES,
Att'ys for Def'ts.

Filed May 26th, 1874.

L. DOBBIN, *Clerk.*

And afterwards, to wit, on the 2nd day of June, A. D. 1874, at a circuit court continued and held at the court-house, in the town of Shelbyville, Mo., before Hon. John T. Redd, judge, the following, among other, proceedings were had, to wit:

Judgm't.

LEVI J. WAGNER & *al.*

vs.

CHARLES METY, THE MISSOURI, IOWA & NEBRASKA RAILWAY CO., & *al.*

This cause coming on to be heard upon the amended petition of plaintiffs and the demurrer thereto filed by the defendant, The Missouri, Iowa and Nebraska Railway Company, the other defendants having failed to answer or demur to the amended petition, it is ordered that the material facts stated therein be taken as confessed as to such defendants making default; and after argument of the legal points involved in the cause and raised by said demurrer; and the court being fully advised thereon, it is ordered that the demurrer be, and is hereby, overruled; and the defendant declining to make further answer, but electing to stand on
511 the demurrer, it is therefore considered, ordered, and adjudged that the defendant, Charles Mety, be restrained and enjoined from delivering to the Missouri, Iowa and Nebraska Railway Company or to any other person or persons for said company the bonds of Scotland county described in plaintiffs' petition or any of said bonds; and it is further ordered and adjudged and decreed that said Charles Mety produce any and all of said county bonds now in his possession before this court on the first day of the May term of this court, A. D. 1875, that the same may be cancelled; and it is further considered and adjudged and decreed that the defendant, The Missouri, Iowa and Nebraska Railway Company, be restrained and enjoined from recovering from said Charles Mety or from any other person or persons acting as agents of said county of Scotland the bonds in the petition described or any of said bonds; and it is further considered, adjudged, and decreed that all of the bonds in the petition described are void by reason of the want of legal authority in the county court of Scotland county to subscribe to the capital stock of said Missouri, Iowa & Nebraska Railway Company and to issue said bonds in payment therefor; and it is therefore ordered, adjudged, and decreed that said Missouri, Iowa & Nebraska Railway Company cause all of said bonds in the petition described and now in the possession of said company, its servants, employees, agents, or attorneys, to be produced before this court on the first day of the May term thereof, 1875; and it is further considered that the plaintiffs do have and recover of the defendant, The Missouri, Iowa and Nebraska Railway Company, their costs in this suit expended, and that they have thereof their writ of execution, the issuing of which is stayed until the November term, 1874.

512 And also on said 2nd day of June, A. D. 1874, the following, among other, proceedings were had, to wit:

Motion to Set Aside Judgment.

LEVI J. WAGNER & *al. vs.* CHARLES METY & *al.*

Now, on this day, comes the defendant, The Missouri, Iowa and Nebraska Railway Company, by its att'y, and files its motion praying the court to set aside the judgment and grant a new trial in this cause, which, being considered by the court, is overruled.

Whereupon def't files its bill of exceptions to the ruling of the court and asked that it be signed by the court and made a part of the record in this case.

Which said bill is in the words and figures following, to wit:

Bill of Exceptions.

LEVI J. WAGNER *et al vs.* CHARLES METY & *al.*

Be it remembered that the above cause coming on to be heard upon the motion of the defendant, The Missouri, Iowa and Nebraska Railway Company, to set aside the judgment herein, which said motion is in the words and figures following:

"The defendant, The Missouri, Iowa and Nebraska Railway Company, moves the court to set aside the judgment and decree herein and upon a rehearing of said cause to render a judgment sustaining the demurrer of this defendant and in favor of this defendant against pl'ffs for costs for the following reasons:

1st. Because the court erred in deciding that the bonds were void for want of authority in the county court to make the subscription and issue the bonds.

513 2nd. The court erred in restraining defendant, Charles Mety, from delivering said bonds to this def't.

3rd. The court erred in restraining this defendant from issuing said bonds.

4th. The court erred in ordering said bonds to be produced for cancellation.

5th. The court erred in overruling def't's motion to set aside the decree.

6th. The court erred in deciding the legal questions arising in the demurrer.

A. J. BAKER,
Att'y for Def't."

The court overruled said motion; to which opinion & decision of the court the said defendant excepted, and prays that this *his* bill of exceptions may be seen, signed, sealed, and made a part of the record, which is done accordingly.

JOHN T. REDD, *Judge.* [SEAL.]

STATE OF MISSOURI, } ss:
County of Shelby, }

I, Leonard Dobbin, clerk of the circuit court within and for the county aforesaid & State, do hereby certify that the foregoing is a full, true, and complete transcript of the record and proceedings had in this cause as fully as the same remains of record and on file in my office.

In witness whereof I have hereto set my hand as clerk and the seal of said court.

Done at office, in Shelbyville, this 26th day of October, A. D. 1874.

[SEAL.] L. DOBBIN,
Clerk of Shelby County Circuit Court, Missouri.

514 And afterwards, to wit, on the sixteenth day of March, A. D. 1875, the following proceedings were had in said cause in the supreme court of Missouri, at the city of St. Louis, in said State, to wit:

Assignment of Errors Filed.

LEVI J. WAGNER *et al.* Defendants in Error,
vs.
CHARLES METY *et al.*, Plaintiffs in Error.

Which said assignment of errors is in the words and figures as follows, to wit:

In Supreme Court of the State of Missouri. March Term, 1875.

LEVI J. WAGNER *et al.*, Plaintiffs,
vs.
CHARLES METY *et al.*, Defendants.

And now come the said —— —— and say that in the record and proceedings of the court below in the above-entitled cause there is manifest error, and for error said defendants assign the following, to wit:

9. That the judgment was rendered in favor of the plaintiffs on demurrer, when it should have been rendered for the defendants.

10. That said court overruled the motion for a new trial made by defendants.

That said court erred in overruling the demurrer of defendants to plaintiffs' petition.

A. J. BAKER &
F. T. HUGHES,
Att'ys for Def'ts.

515 And now come the plaintiffs, def'ts in error, and, for joinder in error, say there is no error in the record and proceedings of said Shelby county circuit court in said cause, as assigned by said def'ts, pl'ffs in error.

J. G. BLAIR,
Att'y for Pl'ff.

On the back of said assignment of errors appear the following endorsements, to wit:

"No. 335. 57. Levi J. Wagner *et al. vs.* Charles Mety *et al.* Assignment of error. Filed March 16, 1875. J. Thornburgh, cl'k."

And afterwards, to wit, on the 21st day of January, A. D. 1876, the following further proceedings were had in said cause in said court, to wit:

Statement & Brief of Defendants in Error Filed.

LEVI J. WAGNER *et al.*, D. E., *vs.* CHARLES METY *et al.*, P. E.

And afterwards, to wit, on the 22d day of October, A. D. 1877, in the supreme court of the State of Missouri, held at Jefferson City, said State, the following further proceedings were had in said cause, to wit:

Error to Shelby County Circuit C't.

LEVI J. WAGNER *et al.*, Def'ts in Error,
vs.
CHARLES METY *et al.*, Pl'ffs in Error.

Now, at this day, come the parties aforesaid, by their respective attorneys, and, after argument, herein submit this cause to the court; leave to plaintiffs in error to file briefs and abstract of record within 15 days.

And afterwards, to wit, on the 23rd day of October, A. D. 1877, the following further proceedings were had in said cause, to wit:

516 *Error to Shelby County Circuit C't.*

LEVI J. WAGNER *et al.*, Def'ts in Error,
vs.
CHARLES METY *et al.*, Pl'ffs is Error.

On motion of plaintiffs in error it is ordered that the time heretofore granted to said plaintiffs in error within which to file abstracts of record & briefs be extended to sixty days.

And afterwards, to wit, on the 24th day of March, A. D. 1879, the following further proceedings were had in said cause, to wit:

Appeal from Shelby County Circuit Court.

LEVI J. WAGNER, JACOB M. JOHNSON, CHARLES FOLKER, JAMES M. GORDON, and JOSEPH SPARKS, Defendants in Error.
vs.
CHARLES METY, JAMES S. FULLERTON, WILLIAM DAWSON, DAVID B. COOPER, and JAMES E. MARQUIS, Plaintiffs in Error.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised

of and concerning the premises, do consider and adjudge that the judgment aforesaid in form aforesaid by the said Shelby county circuit court rendered be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said defendants in error recover against the said plaintiffs in error their costs and charges herein expended, and have therefor execution.

Opinion Filed.

517 Which said opinion is in the words and figures as follows, to wit:

Opinion of the Court.

(Reporter will make statement.)

Oct. T., 1878.

LEVI J. WAGNER *et al.*, D. E., *vs.* CHARLES METY *et al.*, P. E.

Error to Shelby circuit court.

Hon. JNO. T. REDD, *Judge:*

The Missouri, Iowa & Nebraska R. R. Co. were certainly not entitled to the bonds of Scotland county unless upon compliance with the terms and conditions imposed in the order of subscription to the capital stock of that company. State *vs.* Co. Court of Daviess Co., 64 Mo., 30.

There was no such compliance; this the demurrer to the petition of plaintiffs, who are residents & tax-payers of Scotland county, admits. The route was changed & the consideration for the subscription & the bonds therefor failed. In the Daviess county case, *supra*, we held the county court justices absolved from any duty to issue bonds where the conditions of the subscription had not been complied with, and by purity of reasoning they should be restrained from issuing bonds where such issuance would be without authority in consequence of a failure on the part of the company to comply with its contract; the only right to the bonds was based on compliance; when that failed so also did its dependent right. Nor do we doubt

518 that plaintiffs, being tax-payers & citizens, are directly interested in seeing to it that their county officials do not waste their substance & encumber their property by taxation to meet bonds which the county court, unless restrained, would issue without authority of law, and bonds would be issued and delivered without such authority where the fundamental condition of the subscription had not met with at least substantial compliance; otherwise it would prove but a vain and useless formality for the county court to impose any conditions precedent to the issuance of bonds. They might subscribe for a road in one direction & have to put up with one in another built in total defiance of the terms of subscription. These considerations make it abundantly evident that plaintiffs had both the legal capacity as well as proper grounds for their present procedure. Newmeyer *vs.* Mo. & Miss. R. R. Co., 52 Mo., 80; Hooper *vs.* Ely, 46 Mo., 505.

The Missouri, Iowa and Nebraska R. R. Co. never had any existence until 1870, after which the subscription was made. That company was the result of an alleged consolidation of other companies, one of which, being chartered in 1857, had the privilege of having subscriptions made without a vote first taken. This privilege, however, never became a vested right in that company thus chartered, because a subscription was neither made to nor accepted by such company. St. Joe & Denver City R. R. Co. *vs.* Buchanan Co. Court, 39 Mo., 485; Aspinwall *vs.* Comm'rs of Daviess Co., 22 How., 364; Nugent *vs.* Supervisors, 19 Wal., 241.

If the subscription to & its acceptance by the company authorized to receive it had occurred anterior to consolidation, occurred at a time when the county court could lawfully make such subscription & then consolidation had taken place between the company thus clothed with a vested & subsisting right, a widely differ-
519 ent question would have been presented for our consideration. As it is, there being no vested right created anterior to consolidation of the companies, none, of course, could pass to the Missouri, Iowa and Nebraska R. R. Co. in consequence of the consolidation having been effected. Harshman *vs.* Bates Co., 92 U. S., 569; 3 Cent., L. J., 367.

This being the case, the subscription having occurred in 1870, having been made to a new company, that subscription was governed by the provisions of the constitution of 1865 & the law passed in pursuance thereof, and could not be legally made without the sanction of a vote of the people, as required by that law. This matter was fully considered by us in the case of the State *ex rel.* Wilson *vs.* Garroutte, 67 Mo., vol. 7, No. 2 Cent., L. J., p. 29, & the authorities bearing upon the question discussed at large. To that opinion we still adhere. Doing so, we affirm the judgment of the court below, which granted injunctive relief, as prayed, declared the bonds void, & ordered their delivery by Mety to the court for the purpose of cancellation.

Judges Henry & Norton concur; Judges Napton & Hough dissent.

T. A. Sherwood.

STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, do hereby certify the above & foregoing to be a full, true, & complete transcript of the record & proceedings in the foregoing entitled cause as fully as the same appears of record and on file in my office.

Given under my hand and the seal of said court, at the city of Jefferson, this 7th day of October, 1885.

[SEAL.] HENRY W. EWING, *Clerk.*

520 Endorsed: Transcript of record in case of Wagner *et al. vs.* Mety *et al.* Supreme court of Missouri. Offered in evidence in case of Hill *vs.* Scotland County Oct. 14, 1885.

Mr. OVERALL: We object on the ground of irrelevancy and immateriality.

The COURT: We can only go to one point at a time; it will be admitted.

Charles Mety.

Defendant then called as a witness CHARLES METY, who, being duly sworn and examined, testified as follows:

By Mr. CUNNINGHAM:

Q. Please state where you reside.
A. I reside in Memphis, Scotland county, Missouri.
Q. Your first name is Charles?
A. Charles Mety.
Q. How long have you resided there?
A. I have resided there since 1841.
Q. What is your present age?
A. I will be 73 years next November.
Q. Do you remember anything in reference to the delivery of any bonds of Scotland county to the Missouri, Iowa & Nebraska Railroad Company in 1871?
A. Yes, sir.
Q. What function did you perform in connection with the delivery?
A. I was commissioner for the county in delivering the bonds.
Q. Were you known as commissioner or by any other title?
A. I believe commissioner; I am not certain.
Q. You were appointed by the county court to receive the bonds?
A. Yes, sir.

Q. Do you remember when the track of that railway com-
521 pany was completed to Memphis?

A. Yes, sir; on the 20th of September, 1871.

Q. State what you know in reference to the bonds—to the delivery—at that time.
A. I took the bonds to Warsaw at the request of the county court to be delivered to that railway company when the road was finished.
Q. When did you go to Warsaw?
A. I went to Warsaw several — before the road was finished.
Q. Why did you go there?
A. Well, an injunction was expected to be served and the county court wanted me to go there to avoid the injunction.
Q. So that you wouldn't be served with the injunction?
A. Yes, sir.
Q. Did you know of a suit being instituted against it at that time?
A. By hearsay.
Q. You heard there had been a suit filed against it?
A. Yes, sir.
Q. You wished to avoid the service of process in that case?
A. I done it under the direction of the county court.
Q. When you say the county court, do you mean the court sitting as a court, or the members of the court?

A. The members of the court.
Q. Who were the members of the court that told you this?
A. William Dawson and J. B. Cooper.
Q. They told you that out of court, I understand you to say?
A. Yes, sir.
Q. Not in court. Did they give you written instructions?
A. They gave me a written request, notifying me when the road was finished to deliver the bonds.
Q. Have you with you that written request?
A. Yes, sir.
522 Q. Will you produce it? (Paper produced.)
Q. Is that the original?
A. Yes, sir; that is the original.
Q. You received this on the date it is dated, September 20th?
A. Yes, sir.

Mr. CUNNINGHAM: Shall I read it?
Mr. OVERALL: There is no objection, except the general objection.

Counsel read as follows:

Written Request of Dawson & Cooper to Chas. Mety.

"MEMPHIS, Mo., *September* 20, 1871.

Mr. Chas. Mety, trustee, &c.

DEAR SIR: The iron is laid on the Missouri, Iowa & Nebraska railway to the depot, and the building is up. The company having complied with all the requirements, you will please deliver them the first hundred thousand dollars of the county's subscription and receive stock for the same.

Yours, &c., WILLIAM DAWSON,
D. B. COOPER,
Justices of the Scotland County Cour

Mr. METY: As they propose to give you an indemnifying bond you had better accept it.

D. B. COOPER."

Q. Did either of those men write the memorandum below?
A. Mr. Cooper wrote that: "Mr. Mety: As they propose to give you an indemnifying bond, you had better accept it. J. B. Cooper."

Mr. HUGHES: We object; that is a simple direction of the county judges to Mr. Mety.
The COURT: This is only preliminary to something else, I suppose.

523 Q. Who wrote the body of this?
A. McDonald, I believe.
Q. The clerk of the court?
A. Yes, sir.
Q. He wrote the body of the matter?

A. I think so.
Q. And these are the signatures of Dawson and Cooper?
A. Yes, sir.
Q. You took that over; that induced you to go there; you had heard of a suit filed against you and you wanted to avoid the process of that suit?
A. Yes, sir.
Q. What was that suit; how long before you went over there had you heard of the filing of that suit—how many days?
A. Well, I didn't hear just at that time; I don't know how I heard it; perhaps through the parties that wanted me to go.
Q. You started as soon as you heard of it?
A. Yes, sir.
Q. And that was what suit—what was the style of that suit?
A. Wagner and others against the judges of the county court and the county treasurer, the railroad company, and myself.
Q. State whether or not it was the case afterwards carried to Shelby county and from there to the supreme court of Missouri.
A. Yes, sir; the same case.
Q. You went over, you say, as soon as you heard of that suit having been filed?
A. Yes, sir.
Q. Several days before the road was finished?
A. Yes, sir.
Q. And what did you carry when you went over there?
A. I carried one hundred of the thousand-dollar bonds.
Q. Had you countersigned those bonds then?
A. No, sir; countersigned them after delivering them.
Q. Were you present when those bonds were delivered?
524 A. Yes, sir.
Q. Did you make the delivery?
A. Yes, sir.
Q. When?
A. On the 20th of September.
Q. September of what year?
A. 1871.
Q. Where?
A. The First National Bank, in Warsaw.
Q. In what part of the building was it?
A. Well, the actual delivery—the countersigning—was in the business part of the bank—in the front room.
Q. Was there any other room in the building?
A. There was an office back.
Q. A back room?
A. Yes, sir.
Q. Did you spend part of your time in the back room?
A. Well, I have been in the back room occasionally.
Q. Whom did you deliver them to?
A. I delivered the bonds to Gen. Drake, but the actual receipting of the bonds was done by Mr. Zapan, clerk of the bank.
Q. Who was Zapan?

A. He was a clerk in the bank. As I countersigned them he took them from me—received them.

Q. What did he do with them?

A. He folded them up.

Q. Did he put them away or hand them to somebody else?

A. I suppose he put them away.

Q. Where did he put them?

A. Well, I don't know. The table was right in front of the vault, and I suppose he put them in the vault.

Q. Who was present at the time this transaction was going on?

A. Well, the bank officers was.

Q. Give their names, please.

A. Mr. Dodge was.

Q. What is his first name?

A. I don't know; cashier of the bank.

525 Q. Was he cashier then, or did he fill some other position?

A. Cashier.

Q. Was it James B. Dodge?

A. I suppose so; he is cashier at present.

Q. Who else?

A. Mr. William Hill was about; he didn't attend to the receiving of the bonds, but he was about the room.

Q. When the delivery occurred?

A. He was attending to the bank business.

Q. Who else was present?

A. I don't recollect anybody; there might have been others present.

Q. State whether Henry Hill was present.

Mr. HUGHES: I object as leading and suggestive.

A. I can't tell; there were several coming in and out of the room, and I can't tell now who.

Q. Was Mr. Hughes present?

A. Not that I know of.

Q. Can you recall the names of any other persons present?

A. No, sir; I cannot.

Q. How long was this negotiation going on?

A. Well, this was no negotiation; it was simply the delivery.

Q. How long a time did you spend in the bank before delivering?

A. Well, I signed 100 bonds, with my name and date on it, and it took perhaps an hour or longer.

Q. Were there a number of persons about the bank when this delivery was made—any other persons there?

A. Well, I can't tell; people was coming in and out in the front of the bank.

Q. Do you remember being in the back part of the building at any time?

A. No, sir; I do not.

Q. Did you have any conversation with anybody about the delivering of those bonds?

A. Well, previous to the delivery I had.

526 Q. What had you?

A. Gen. Drake and Mr. Henry Hill they gave me a bond—an indemnifying bond.

Q. Before you delivered the bonds?

A. Yes, sir.

Q. Where was that transaction?

A. That was at the hotel, I think.

Q. They gave you an indemnifying bond?

A. Yes, sir.

Q. Examine that bond.

A. Yes, sir; that is the bond.

Q. Do you know the signature of Henry Hill; have you seen him write?

A. Yes, sir; I have seen Mr. Hill write several times.

Q. Did you see him write that signature there?

A. I can't recollect now.

Q. Do you recognize it as his handwriting?

A. Yes, sir.

Q. Have you seen F. M. Drake write?

A. Oh, yes.

Q. State whether that is his signature.

A. Yes, sir; I had occasional letters from him.

Q. Is that the bond which was delivered to you at that time? (Paper shown to witness.)

A. Yes, sir.

Mr. CUNNINGHAM: I will read it.

Mr. OVERALL: We object.

Objection overruled.

Bond was read as follows:

Bond. (*Ex. A.*)

We, the undersigned, "Missouri, Iowa and Nebraska Railway Company," hereby obligate and agree and bind ourselves, our heirs and assigns, to indemnify Charles Mety, of the county of Scotland, State of Missouri, against all damages, costs, expenses, &c., which the said Mety, as trustee for the county of Scotland aforesaid to hold and deliver certain railroad bonds issued and placed in his hands by the county court of said county, may incur by reason of
527 certain injunction suits now pending in the Scotland county circuit court, or by reason of any petition for injunction which may be filed before Judge E. V. Wilson, in Clarke county, Missouri, on September 22d, 1871.

In witness whereof we have hereunto set our hands and seals this 21st day of September, A. D. 1871.

MISSOURI, IOWA & NEBRASKA RAILWAY CO.,
By F. M. DRAKE, *Pres't*,
HENRY HILL, *Sup't M., I. & N. R. R.*

Q. State whether you had any conversation in reference to that bond before the execution and delivery; and, if so, where that was.

A. Yes; because I was advised by others as well as the court that I should take an indemnifying bond, on account that I might be put to costs, anyhow to defend myself, and I got Judge — to write a bond out at home, and I brought that with me, but the bond was very extensive, you know; it was a very good bond.

Q. Good for whom?

A. Good for me. It was protecting me against every possible event, but Gen. Drake thought the bond rather too wide-reaching, and I thought so myself, that the bond was rather—that it covered more ground than was necessary, and I told the General to write a bond, or have one written, to cover the case, and I was willing to take it; so I don't know who prepared this bond, but I took it.

Q. Did you know who Drake was?

A. You mean Drake, the president of the road?

Q. F. M. Drake; yes, sir.

A. Yes, sir.

Q. Do you know whose handwriting that bond is in?

A. No, sir; I do not.

528 Q. Did you see the bond written?

A. No, sir.

Q. I understand you to say it was brought to you ready for execution at the hotel?

A. I received that bond in Gen. Drake's room.

Q. It was brought to you written?

A. Yes, sir.

Q. Ready to be signed?

A. Yes, sir.

Q. You consented to accept it in Drake's room?

A. Yes, sir.

Q. What else occurred after that?

A. Nothing that I recollect; that I can think of now.

Q. Do you recollect any other conversation that occurred?

A. Oh, well, there was a good deal of talk there; everybody was talking about the trouble the railroad company had—trouble with the hands and the injunction suit pending in Clarke county.

Q. That was the general subject of conversation?

A. The general conversation; I can't recollect the details of it.

Q. You think that was the chief subject of conversation?

Objected to.

A. Well, everybody was talking about it.

Q. Who gave you these bonds before you went over?

A. I expect—I can't recolleet now, but naturally I would have received them from the county clerk.

Q. Mr. McDonald?

A. Yes; but I have no distinct recollection of that now.

Q. There was no session of the county court, I understood you to say, at the time?

A. No, sir.

Q. This paper these two men signed was signed by them individually?

A. It was sent to me from them.

Q. Now, did you deliver any more bonds to this company
529 after that?

A. That following December, 1871.

Q. What occurred at that time?

A. Well, the railroad company hadn't completed the road—on account of the weather, it was impossible for them to do it in time—and the county court passed an order authorizing me to deliver those bonds under certain conditions that they should keep the bonds, to comply with the conditions of the road.

Q. Had you been served with process of the suit against Mety when the bonds had been delivered?

A. Very likely I had.

Q. The record shows?

A. Yes, sir.

Mr. HUGHES: No, sir; the record don't show; he never was served.

WITNESS: Oh, I was served; I know that, because I requested Gen. Drake to protect me, or to have the case attended to.

Q. And Gen. Drake agreed to defend you in the case?

A. Yes, sir; and I believe Mr. Hughes will recollect that.

Q. Do you remember who defended the case—the lawyers?

A. Mr. Hughes, I believe; in fact I didn't know any other lawyer in the case; Mr. Baker, perhaps.

Q. Did Birch & Mackey?

A. I don't know.

Q. Do you remember serving the paper on you?

Mr. OVERALL: We object; the paper will show for itself.

The COURT: Let him state.

WITNESS: I have no existing recollection now, but my impression is it was served; I can't tell.

Q. Do you recognize the signatures to this paper? (Paper shown.)

A. Yes, sir.

Q. Whose handwriting is that?

A. Mr. Hill's.

Q. Is there any other signature there besides Hill's?

A. Well, I don't know whether that is Gen. Drake's signa-
530 ture or not.

Q. You recognize that as Henry Hill's signature?

A. Yes, sir.

Mr. CUNNINGHAM: I offer this in evidence, the indemnifying bond of December, 1871, signed Henry Hill, president of the Iowa & Nebraska Railway Company.

Q. State whose handwriting the body of that bond is in.

A. That is Captain McKey's.

Q. What is his first name?

A. John M., I believe.
Q. What is his occupation?
A. A lawyer.
Q. Is he present in court?
A. It is John B., I believe.
Q. Do you see him in court?
A. Yes; I see him. There he is.
Q. The gentleman sitting at the foot of the table; that is the man that drew that?
A. Yes, sir; I believe that is his handwriting. I have forgotten his middle name.
Q. I understand you to say that bond was executed when you delivered the second $100,000?
A. Yes, sir.
Q. Where did you deliver the second $100,000?
A. That was delivered, really, by the court themselves.
Q. Where?
A. In the county clerk's office.
Q. By the members of the court, and not by the court; they were not in session at the time?
A. Yes; in session.
Q. They delivered that?
A. Yes, sir; the bond explains the whole matter.

Mr. OVERALL: We object to this for the same reason.
The COURT: The objection will be overruled.

Mr. Cunningham then read the bond in evidence, as follows:

531 *Bond.* (*Ex. B.*)

Know all men by these presents that we, the Missouri, Iowa and Nebraska Railway Company, as principal, and —— ——, as sureties, are held and firmly bound unto Charles Mety, Esq., trustee of the county of Scotland and State of Missouri, in the sum of one hundred thousand dollars; to the payment of which, well and truly to be made, we bind ourselves, our successors or assigns, administrators or executors, our heirs or legal representatives, if default be made, and to the extent that such default is made in any or all the conditions following—that is to say:

The condition of the foregoing obligation is such that whereas the honorable county court within and for the county of Scotland and State of Missouri theretofore, to wit, at the August term, A. D. 1870, thereof, among other things, ordered:

"And the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have completed their said line of railroad from Memphis to the west or north line of said county and the cars are running over the same through said county (provided, if said railroad shall be so located as to miss the west line and strike the north line of said county, it shall do so at a point not exceeding four miles east of the northwest corner of said county); said railroad shall be so built and the cars so running thereon as aforesaid within two years from the date of this order."

And whereas — the said court afterwards, to wit, at an adjourned session of the same, held on the 11th day of December, A. D. 1871, among other things, it was by said court ordered "that said order of said court hereinbefore recited be so far modified as to authorize and direct
532 Charles Mety, Esq., trustee for said county, nominated and appointed in said order of this court, and said Charles Mety, Esq., trustee, is hereby authorized, empowered, and directed, upon full compliance by said Missouri, Iowa and Nebraska railway with the terms and stipulations hereinafter set forth, to surrender immediately to said Missouri, Iowa and Nebraska Railway Company or their duly authorized agent for that purpose the one hundred thousand dollars of the bonds of Scotland county aforesaid provided for and issued to said Charles Mety as trustee under and by virtue of the terms of the order of this court heretofore made in the premises and upon the following express conditions—that is to say:

"1st. That the said Charles Mety, trustee, shall, before issuing said one hundred thousand dollars of said bonds or any of them, cancel and detach from each of said bonds so to be delivered the coupons for each of said bonds attached for all interest due or to become due hereon on the 31st day of December, A. D. 1871.

"2nd. That said Missouri, Iowa and Nebraska Railway Company shall, by the 31st day of December, A. D. 1871, complete their said railway to the western boundary line of said county of Scotland, have the same bridged, tied, the iron laid, and the cars running thereon to that point; and, furthermore, if the said Missouri, Iowa and Nebraska Railway Company shall not have so as aforesaid completed their said railroad and the cars running thereon by the 31st day of December, A. D. 1871, then and in that case the said Missouri, Iowa and Nebraska railway are to make all necessary needful regulations to provide for the payment and discharge of the interest then and thereafter accruing upon said one hundred thousand dollars of bonds so to be issued to them as aforesaid from and
533 after the 1st day of January, A. D. 1872, and until such time thereafter as said railroad shall be so completed and the cars so running thereon to the said western boundary line of said county, as is provided in said order of this court heretofore made in the premises; to the end that in no event shall said county of Scotland nor the said Charles Mety, trustee, be or become responsible for interest on said one hundred thousand dollars of bonds until the said railroad shall be so completed and the cars running thereon to the said western boundary line of said county of Scotland.

"3rd. That the said Missouri, Iowa and Nebraska Railway Company shall pay or cause to be paid at maturity the interest now due or which shall become due on the bonds of said county heretofore issued to said Missouri, Iowa and Nebraska Railway Company on the 31st day of December, A. D. 1871, at the city of New York, and shall accept therefor and in discharge thereof the warrant or warrants of this court drawn on the county treasurer of said county, payable when and as requisite funds shall be in the treasury of said county applicable to the payment of the same, and when said interest has been so paid and said railroad company shall have received

said warrants in payment thereof the coupons for such interest so paid off and discharged shall be canceled and returned to the clerk of this court, who will receipt for and file the same in his office.

"4th. And said Missouri, Iowa and Nebraska Railway Company shall furthermore guarantee, so far as may be necessary, that it will protect the interests of said county of Scotland and the said Charles Mety, Esq., trustee, as aforesaid, in accordance with the orders of this court heretofore made in the premises:"

534 Now, therefore, be it known and understood that if and whenever all and singular the terms, stipulations, and conditions of the said orders of the said county court of Scotland county and State of Missouri, and hereinbefore recited and referred to, have been fully and completely complied with on the part of said Missouri, Iowa and Nebraska Railway Company according to the tenor and spirit hereof, then this obligation shall become void and shall be held for naught; but otherwise shall remain in full force and virtue in law.

In witness whereof we have hereunto set our hands and seals, and by so doing ratify, approve, and confirm all and singular of the foregoing stipulations; and we further certify that at the time of the execution hereof by us as aforesaid the several sheets numbered, respectively, 1, 2, 3, 4 in the margin thereof were attached and connected hereto, forming a single instrument or obligation so by us executed.

Done this — day of December, A. D. 1871.

MISSOURI, IOWA & NEBRASKA R'Y CO.,
By HENRY HILL, *Sup't.* [SEAL.]
IOWA CONTRACTING CO.,
By HENRY HILL, *Sup't.* [SEAL.]
HENRY HILL. [SEAL.]
FRANCIS M. DRAKE. [SEAL.]

Q. Do you know of anything else relative to this matter that you have not testified?

A. No, sir; I can't think of anything else.

Cross-examination by Mr. HUGHES:

535 Q. That is your signature, is it?

(Paper shown to the witness.)

A. Yes, sir.

Mr. HUGHES: I wish to read a question or two taken from a former deposition of Mr. Mety in this case. Speaking about some conversations which took place: "Interrogatory 16. State now if you know"—talking about the injunction suit—"state now if you know whether the plaintiff, William Hill, was present and heard any of these conversations about the threatened injunction and the delivery by you of the bonds."

Mr. KRUM: We object to this manner of examining the witness.

The COURT: Put the question directly.

Mr. HUGHES: The question is what I read. The answer is, "I don't know of my own personal knowledge; he may have been present."

Mr. KRUM: I object to this mode of interrogating the witness; he has not been interrogated in regard to this deposition; that is a brilliant manner of cross-examining the witness.

The COURT: Why not put the direct question and call his attention to the deposition heretofore taken?

Mr. HUGHES: My proposition was to read the question and answer to him and ask him if that was as he recollected it.

Mr. KRUM: That is not the proper way to do; you are putting the cart before the horse.

By the COURT:

Q. Was William Hill present?

A. I don't know of my own personal knowledge; he may have been present and may not; I can't tell.

536 The COURT: Put the direct question to him, and if he hesitates you may read what he said and ask him if that is as he recollected it.

Mr. OVERALL: He was interrogated about that in the testimony-in-chief.

Mr. KRUM: I submit the proper manner of cross-examining the witness in reference to the deposition is to inquire as to his recollection of the subject-matter concerning which he has testified.

The COURT: That is what the court has just ruled in regard to it; put the direct question to the witness—was or was not.

Mr. OVERALL: He has been asked that question in the examination-in-chief.

The COURT: If you wish to rest there that is the end of it.

Q. William Hill was at Warsaw when this conversation was had—any conversation concerning the injunction suit—was he not?

A. It would be impossible for me to recollect, there was so much general talk, whether he was present or not.

537 *John T. Mackey.*

Defendant next called as a witness JOHN T. MACKEY, who, being sworn, testified as follows:

By Mr. KRUM:

Q. Where do you live, Mr. Mackey?

A. Now?

Q. Yes.

A. I live at Keokuk, Iowa.

Q. In the year 1871 where did you live?

A. I went to Memphis, Missouri, in May, 1871, and lived there about eight years. Prior to that time, in 1871, I lived at Keokuk, Iowa.

Q. Your occupation is what?

A. I was an attorney-at-law; practicing law.

Q. Prior to that time what was your occupation, Mr. Mackey?

A. Well, I was captain in the regular army until the 31st of December, 1870, when I resigned.

Q. Was it then you went to live at Memphis, Scotland county?

A. Shortly after that; as soon as the spring opened so that the travelling was good.

Q. Do you remember when the track of the Missouri, Iowa & Nebraska railroad was completed to Memphis?

A. Yes, sir; I remember when it was completed there.

Q. About what time was that?

A. My recollection is that it was completed about the—that the cars were in there for the first time on the afternoon of the 20th of September; I think it was after dinner.

Q. 1871?

A. 1871, yes. It might not have been after dinner, but it was well along in the day. It was completed on that day.

Q. Do you know anything, Mr. Mackey, in reference to the delivery of the bonds of Scotland county to the railroad company in September, 1871?

A. I think I do, sir.

538 Q. Where did the delivery take place?

A. At Warsaw, Illinois.

Q. Do you remember the time of the delivery?

A. My recollection about it is that a bundle of papers I suppose containing bonds was delivered over on the evening of the 20th of September, and according to my recollection they were taken out again and countersigned in Scotland, but it may have been at different times, although on the same day; I can't fix that very positively in my mind; the bonds were handed over wrapped up in a paper, or something I supposed bonds. I never saw them until they were brought in this room.

Q. Who had the bonds?

A. Mr. Mety had the bonds.

Q. In what capacity was Mr. Mety acting at that time?

A. He was trustee, appointed by the court of Scotland county to deliver the bonds when the conditions were complied with.

Q. Where were the bonds delivered?

A. In the bank at Warsaw.

Q. When you speak of the bank what bank do you mean?

A. I think there is only — bank there, the First National Bank of Warsaw.

Q. Did you say that the bonds were countersigned in the morning?

A. Well, sir, I can't say whether it was the morning after, on the same day, — at another time. It was done at another time; I can't say now; it may have been the same day or the next morning.

Q. Do you know, of your own knowledge, where Mr. Mety received the bonds?

A. No, sir; I do not. He had received them and gone away with them before I knew.

Q. Did you go over with him from Memphis to Warsaw?

A. No, sir.

Q. You met him in Warsaw?

A. I met him in Warsaw.

539 Q. In what capacity were you acting in Warsaw in connection with that matter?

A. Well, sir, my partner and myself had been acting as attorneys for the Missouri, Iowa & Nebraska Railway in that county, and on the first train leaving Memphis—I don't know whether by invitation or whether just because we considered the official part of it—we got on the train and went to Warsaw.

Q. Who was your partner?

A. Mr. Birch, sitting by you there; and we went to Warsaw. I can't recollect whether by instructions of the railroad officers, or whether we went on invitation, or whether we just went for the ride, or what it was, but I remember having gone; I think, though, at the solicitation of the——

Q. Did you know of the institution of the suit of Wagner against the railroad?

A. Well, I knew of it; I knew that it was in the clerk's office.

Q. When did you first learn of it?

A. I learned of it—I think the suit was filed on the 11th, on Monday, and I saw the petition in the hands of the attorneys on the other side on the evening before, but I didn't see the contents of it and didn't read the petition until long afterwards.

Q. This suit was filed, you say, on the 11th of September?

A. Yes, sir.

Q. Now, upon the occasion of the delivery of the bonds at the bank in Warsaw, who were present?

A. I rather think——

Mr. OVERALL: We object unless you know.

A. Well, my best recollection—it is 14 or 15 years ago, and I can't say I know.

Q. What we want is your best recollection in regard to it.

A. I can't say I know, but my best recollection is that Gen. Drake,
Mr. Mety, Mr. Henry Hill, Mr. Zapan, book-keeper of the
540 bank, and there were others coming in and going out; I don't know exactly who was present; I think Mr. William Hill and Mr. Dodge were there, but I don't know certainly whether they were or not; they might have been, and probably were, in and out at times, and might not have been there just at that time.

Q. You say they were in and out?

A. Yes, sir.

Q. In what part of the bank building did this delivery take place?

A. Well, which delivery do you mean—when the bonds were first handed over?

Q. The first delivery of those bonds?

A. Mr. Mety had the bonds on special deposit in the vault of the

bank for safe keeping I think, and when the indemnifying bond was made—suited him—he stepped into the bank proper with the book-keeper or Mr. Dodge, cashier, I don't remember which now, who got a package which I supposed contained the bonds, and stepped back to the door of the bank office and gave them to Gen. Drake, the president of the road; handed the bundle—gave the bundle of paper to Gen. Drake.

Q. Did you know anything of the execution of the bond of indemnity at that time?

A. I know there was one executed.

Q. Was that before or after the bond was delivered?

A. That was before, sir.

Q. Was there any conversation between the parties there in regard to that bond of indemnity?

A. Between what parties?

Q. The parties present, whoever they were?

A. Yes, sir; my recollection is there were two or more bonds either written or attempted to be written on the occasion. I think three bonds were printed—blank bonds, not signed, and some
541 one took the third bond over to Mr. Mety, who was at the hotel, for his information and instructions in regard to them, and then the bond was accepted; the others were never executed.

Q. Do you know who drew the bond which was accepted?

A. I do not; I don't remember that. I drew one, but I don't know whether it was accepted or not. I have understood that the one Mr. Hughes drew was accepted; I don't know, though; I haven't seen it.

Q. Do you know in whose handwriting this bond is? (Paper shown to witness).

The COURT: Is that the one that was executed?

Mr. KRUM: Yes, sir.

A. Yes, sir; that looks like Mr. Hughes' handwriting.

Q. Now are you able to recall who was present when this question of indemnity was being discussed?

A. The question of indemnity?

Q. Yes?

A. No, sir; I am not altogether. I think that question was discussed at the hotel, but I wasn't present; and when Mr. Mety and Gen. Drake came back to the bank office with the bonds then there was a— I believe a supplemental discussion on that question, and I heard that.

Q. Well, who was there then?

A. Well, if I recollect right, very much the same parties were there as before; but I recollect Mr. William Hill was there at that time.

Q. State to the jury what the discussion was—what was said—as well as you can recollect.

A. Mr. Hill says—Mr. Henry Hill says: "Well, have you got it fixed up"—something like that—words to that effect. "Have you got it fixed up or agreed upon"—something like that; and Mr. Mety says, "I suppose it is fixed up, but I understood that William

Hill was to sign the bond;" and then Mr. Henry Hill said to
542 him that it was not proper for the bank officers to sign it, either individually or in their bank capacity.

Q. I didn't catch the last part of your answer.

A. Mr. William Hill repeated that he didn't think—he said he couldn't sign it, nor Mr. Dodge couldn't sign it, for it wasn't proper for them to sign it in their bank or official capacity.

Q. That is, this bond of indemnity?

A. That is what I understood.

Q. Was the paper there before the parties at the time of this discussion?

A. I think it was lying on the desk in the bank; it might have been in Mr. Mety's hands; I don't know.

Q. Was anything stated at that time by anybody in regard to this suit of Wagner?

A. That was about all we talked about while we were there.

Q. About Wagner's suit?

A. Yes, sir; from the time we got up the hill until the matter was consummated; that is about all we talked about.

The COURT: I can't hear what you say.

WITNESS: I say from the time we arrived in the city until we left; that was about all that was talked about.

Q. Right there, when you arrived at Warsaw, was there anybody with you besides your partner? You spoke of "we" having arrived. Who did you include in that designation?

A. I think Mr. Mety's oldest son was with us—George Mety; I wouldn't be positive whether he went over to Warsaw or not.

Q. When you first arrived at Warsaw did you go immediately to the bank?

A. No, sir; we went first to the railroad office, a door or two from the bank.

Q. And what did you find—any of these parties there—either William Hill or Mr. Henry Hill?

543 A. Mr. Henry Hill and Gen. Drake and the secretary of the company were there, and I don't recollect about seeing Mr. William Hill until after—some time afterwards.

Q. Was Mr. Mety at the railroad office when you first got there?

A. No, sir; he was not there; he was at his hotel.

Q. Did you go from the railroad office to the bank?

A. Part of us; I did; I was at only those two places first, till after that was consummated, and then went some place to get something to eat, but I can't tell now where it was.

Q. Well, about what time of day was it when you all assembled at the bank?

A. I can't fix the hour of the day, sir, but I think it was a little after banking hours; might have been pretty well on towards evening.

Q. I understand you to say, according to your recollection, the bonds were not countersigned until the next morning?

A. Well, that may have been so or they may have been counter-

signed later in the evening, but it was at a different time from the time they were handed over to Gen. Drake.

Q. I ask you—the countersigning did take place after this bond of indemnity had been executed?

A. Oh, yes.

Q. Now, this last conversation you have spoken of, whereabouts in the bank did that occur; are you able to recall?

A. No; I don't suppose I could, with any definite certanity, the exact location in the bank.

The COURT: Was it in the bank?

A. In the bank, yes; the last conversation was.

Q. State to the jury whether Mr. William Hill said anything with reference to the purpose for which that bond was given.

A. Mr. William Hill?

Q. Mr. William Hill, yes?

544 A. No; I don't remember anything that he said about that.

Q. Sir?

A. I don't remember anything that he said about that.

Q. You say that Mr. Mety said he had expected Mr. William Hill would go on the bond?

A. No, sir; Mr. Hill said he expected the bank would sign the bond by his coming to Warsaw.

Q. Mr. Mety said that, you mean?

A. Yes; Mr. Mety said that and Mr. Hill said, "No," it wasn't proper for either he or Mr. Dodge to sign it, either individually or in their bank capacity, and some one said, I don't know whether Mr. Hill or who it was, that the bond was good enough for $200,000 without their signatures; somebody said that.

Q. Somebody in the party?

A. Yes, sir; and I might have said so myself. I thought so.

Q. Who was Gen. Drake; what capacity was he acting in there?

A. He was president of the Missouri, Iowa & Nebraska Railway Company; Francis M. Drake.

Q. State whether any inquiry was made by anybody upon either of the two occasions of which you have spoken in regard to the purposes of the suit or Wagner?

A. Yes, sir; something was said on that subject, but I can't just exactly get hold of it now—what it was; somebody in the —, at one or the — of the meetings, said they couldn't see the object of that suit when the railroad had complied with its contract and given them a good road to the county and opened it up for emigration, etc., why they should resist the delivery of the bonds, and then somebody said something to that, but I can't think what that was.

Q. Sir?

A. There was a desultory conversation going on all the time about that question and various things were suggested. I can't re-

545 member now what was said, but that is substantially the way it started.

Q. As I understand you, the general topic of conversation was in regard to this proceeding that Wagner had instituted?

A. Yes, sir.

Q. Against Mety and others?

A. Yes, sir. Mr. Mety met us shortly after we got into town and wanted to know about the Wagner suit. For my part, I hadn't read it. I might have read it or scanned it in the clerk's office or the circuit court clerk's office, but I hadn't done so, so I couldn't give him any information; only that it was just simply a suit for an injunction, and that the principal ground was on the change of route of the road from the route originally established—that is, instead of going northwest from Luray it pursued a westerly course, and, it being an abandonment of its original plan, was contrary to the orders of the county court.

Q. What, if anything, was said in regard to the reason for delivering the bonds over at Warsaw rather than at Memphis?

A. At Warsaw?

Q. Yes; in this talk at the bank was anything said as to the reason for delivering the bonds at Warsaw?

A. I don't remember anything said about that, sir, there; but it was generally understood.

Mr. OVERALL: We object to a general understanding and object to the gentleman's leading the witness.

The COURT: What, if anything, was said in regard to going to Warsaw to deliver the bonds?

A. I don't remember anything was said after we arrived at Warsaw.

Q. Why did you go to Warsaw instead of stopping at Memphis? counsel asks.

A. Well, Mr. Mety had gone to Warsaw when I first knew of it and taken the bonds with him and they were to be delivered
546 there, but for the reason of it I did not hear discussed after we got to Warsaw, the counsel asked.

The COURT: Well, the counsel asked after you got to Warsaw if there was any discussion about it. What was it?

A. I don't remember of anything having been said then.

By Mr. KRUM:

Q. Can you recall whether there was more than one room in the bank?

A. More than one room?

Q. Yes.

A. No, sir; there was only one room in the bank, but it was divided — a partition, or something like that, into two rooms; there was the bank proper, where the officers did business behind the counter, and then the office was divided by a partition extending part of the way up, and two doors.

Q. Was there a separate entrance to the back portion of the bank?

A. Yes; a side entrance where customers could visit the bank after banking hours, I suppose; around the side way.

Cross-examination by Mr. HUGHES:

Q. Mr. Mackey, at what time, do you remember, did the cars leave Memphis on the afternoon of the 20th of September, as you state?

A. No, sir; I can't fix the hour, Mr. Hughes; I have been studying about that.

Q. Wasn't it as late as 3 or 4 o'clock?

A. I hardly think so; no, sir; I don't think it was.

Q. You remember the track was laid up past the depot on that day, do you not?

A. Yes, sir; that is my recollection; we were down there.

Q. Do you remember seeing me there?

A. Yes, sir.

Q. Do you remember it was after dinner?

A. No, sir; I can't even remember that, but I am inclined to think it was afternoon, but I am not positive.

Q. There were quite a number of people there, were there not?

547

A. I rather think there were a good many people; I don't remember any one.

Q. The track had been completed to Memphis, and the people were there to see it?

A. Yes, sir.

Q. These county judges were there, were they not?

A. I think they were; I think Dawson and Cooper were there; I don't remember about Murphy

Q. Now, then, you say you went on the first train to Warsaw. That was the construction train that pulled up to the little depot, was it?

A. I think so.

Q. That was all the train they had, was it?

A. That was all the train they had—flat cars.

Q. That is about 40 miles from Alexandria, on the Mississippi to Memphis, Missouri?

A. That is what they call it, I believe.

Q. There never had been any passenger train run on that road—in fact, it was just new from Alexandria out?

A. Oh, yes; just there that summer.

Q. Just built it from Alexandria out. Now, what time did you get to Warsaw?

A. I can't tell, Mr. Hughes, what time, but it was in the afternoon of that day; it must have been the afternoon; I can't tell what time.

Q. Were you at Waterloo on the next day when application was made to Judge Wilson for a temporary injunction in the Wagner case?

A. I was at Warsaw—I was at Waterloo, I mean, that day, or a day or two afterwards; I am not certain which.

Q. Were you at Waterloo, the then county seat of Clarke county, Missouri, when the application was made to Judge Wilson there for a temporary injunction in this Wagner suit?

A. I don't know whether I was or not; I don't think I was.

548 Q. You don't think you were there at that time?

A. No, sir.

Q. Didn't you say to Mr. Henry Hill and myself a week last Saturday, at my office at Keokuk, that you were there?

A. I was there at that term of court and I was there with you, but I can't remember that it was the day the injunction was served.

Q. But didn't you state to us that you went with me over there for that purpose, to be there as an attorney in that case?

A. Well, that is my recollection of it.

Q. You were attorney in that case, were you not, you and Birch?

A. Yes.

Q. You said you were there?

A. That is my recollection.

Q. And Mr. Birch was there?

A. Yes; but I wasn't very positive about the date then, and I can't remember positively about it now.

Q. Now, didn't you say further that you stayed all night in Waterloo?

A. I said I thought so.

Q. You now think so?

A. I think so yet.

Q. Didn't you say also at that time you didn't think you stayed in Warsaw all night at that time?

A. I don't think I said that.

Q. Don't you remember telling me in my office that you had no recollection of staying in Warsaw over night, but you did recollect staying in Waterloo over night?

A. I don't remember now if I stayed in Warsaw where I did stay.

Q. Didn't you testify when they took your examination in Memphis that you got to Warsaw about noon? In this deposition from which Judge Krum has read didn't you testify there that the train left Warsaw about noon—got there about noon—and you went

549 from there to the Adams House and got your dinner? Didn't you testify that in your deposition from which Judge Krum has been reading?

A. I think so.

Q. Now, then, that is not true, is it?

A. I don't think that is true. If we got our dinner there we got it away after dinner time, and that is my impression now, but it is so long ago, and so many things have transpired. I didn't suppose I would ever be a witness in this case, and my recollection about many of these things, as to dates, particularly the hours of the day, is very indistinct.

Q. You said on that occasion, after we had talked to you about that, that it all seemed like a dream, and it was possible you were not there in Warsaw at all, didn't you?

A. I don't remember about that. I said this: That if the views of Zapan and others were true—that is, that I didn't take dinner at the Adams House that day——

The COURT: It is useless to go further unless we can hear what the witness says.

WITNESS: I said this: If the recollection of Mr. Zapan and others, who were there at the same time, and Mr. Adams among the rest—that I didn't take dinner at the Adams House, and didn't stay at Warsaw that night; that it seemed like a dream to me. I seemed to have stayed there, but that I couldn't tell where I stayed or where I took dinner?

Q. No; it seemed to you that if you took any meal at Warsaw it was dinner.

A. That was my first impression.

Q. That is what you testified to in this deposition?

A. Yes, sir.

Q. But when I talked to you in my office, as I have stated,
550 and said that you were not there at all on that occasion and didn't go to Warsaw, and that the register of the hotel will show that you were not there at all, then you — "It is possible," using your own language, "that the whole thing is a damn lie," didn't you?

A. Well, so it is; it may be that the whole thing has been wrought upon my mind by conversations subsequent, but my best impression and recollection now is that what I state now is the truth.

Q. Now, your best recollection is it is true?

A. Yes, sir.

Q. You have talked with parties and read that deposition over a number of times since you have been here, haven't you?

A. No, sir; I have not seen the deposition.

Q. You have talked with counsel?

A. Not on that subject I have not.

Q. About this conversation I had in my office, telling it was a like a dream to you and might all be possible it was a damn lie, and it might be a subsequent impression, and that I said to you that we would have to have you come down here and refresh your memory; that is the occasion of your being here now, isn't it?

A. Yes, sir.

Q. Now, if you went to Warsaw on that construction train it didn't run very fast, did it, at that time; if it left at 2 or 3 o'clock it wouldn't get to Alexandria much before night, would it?

A. Well, I don't know, sir, now, how fast it went; probably not over 15 miles an hour, I should think.

Q. Not over what?

A. Not over 15 miles an hour.

Q. That would take it two hours and a half?

A. Yes, sir.

Q. Now, they had to cross over the river?

A. Yes, sir.

Q. And crossing over the river to Warsaw it would be about night, wouldn't it?

A. Late in the afternoon.

Q. Now, it would be after banking hours, wouldn't it?

A. Yes, sir.

551 Q. Now, if you were at Waterloo on the next day, you came out in the morning from Warsaw, crossed over to Alexandria, took the construction train, and came out to Kahoka?

A. Clarke City.

Q. And went over a mile and a half or two miles to Waterloo, didn't you?

A. Yes, sir.

Q. So, if you intended to be at the court in Waterloo you would have left Warsaw in the morning, come out on the construction train, which would run out on the end of the line to work during the day, wouldn't you?

A. Why, I think that is the only way.

Q. That would be the ordinary way. Then, of course, if you were in Warsaw at all it must have been from about sundown or dark, and anywhere from breakfast time or a little after breakfast time in the morning; that would have been the only time you would have been at Warsaw on the day of the 20th—at Warsaw on the night of the 20th and Waterloo on the night of the 21st?

A. I think possibly, though the train left Waterloo on the 20th. I don't know, it may have left later, but I can't fix it in my mind now. I rather think from the conversations and incidents that transpired there that day that it was possibly later or earlier than that in the day; probably right after dinner.

Q. If you were at Waterloo on the day of the 21st the probabilities are that you went out in the forenoon or in the morning in order to be there at court?

A. If I was there, yes.

Q. The time the court opened was about 9 o'clock; isn't it usually in the country 8 or 9 o'clock?

A. Yes.

Q. Then, of course, you left Warsaw before banking hours on that morning?

A. Yes; if we left at that time—if we left on that morning we left before banking hours.

552 Q. Now, if you stayed in Waterloo over night you didn't stay in Warsaw over night, did you?

A. Oh, no, no, sir; I can't remember.

Q. Because you were only from the 20th to the 21st going and coming from Memphis?

A. Oh, I don't know that. The possibilities are that I wasn't at Waterloo and the possibilities are that I wasn't at Warsaw; I don't know.

Q. You wouldn't be positive about either one?

A. I wouldn't be positive as to either one.

Q. And your impression was until now—your best impression has been you stayed in Waterloo over night and didn't stay in Warsaw?

A. No; I say before my impression was I didn't stay in Warsaw.

Q. I say your best impression the other day was you did not?

A. I remember distinctly staying in Waterloo one night, but that

it was that night or anything of the kind I can't remember. I remember it by a certain incident, a transaction at Waterloo, and if I could get the record there I could identify that.

Q. Now, let me call your attention to a matter. You had no other business at Waterloo on that day except as an attorney in this case, had you?

A. Yes, yes. We had two cases there on a change of venue from Stoddard county to Clarke; that is what I was there or we were there on; whether it was then that—if we were there that day. I can't remember whether it was that particular day we met at Waterloo or not, but I remember meeting you there on some occasion.

Q. Don't you remember telling me——

A. I remember, I was going to say—by the way, we came over from Waterloo to Clarke City.

553 Q. Let me ask, Do you remember telling me and Mr. Hill at my office, as I have stated, that you came back with me; you remember distinctly that I came with you from Waterloo over to Clarke City the day or afternoon that Judge Wilson had made this temporary injunction, didn't you, and didn't you tell me this as an evidence of your recollection: "I remember Hughes; one thing that calls to recollection, one thing that makes me remember about being over to Waterloo and coming back with you over to Kahoka, and that was I had a terrible diarrhae, and I think you were a little sick and went all over Clarke City to get some whisky and lager beer?"

A. That is true.

Q. So we laid on a bench there and then you came from Waterloo to Clarke City with me?

A. That is all true, except I can't remember that that was the day that the restraining order was granted.

Q. But you do remember coming with me over to Waterloo?

A. I do; yes, sir.

Q. When we waited for the train to take us to Memphis; we went to Memphis that afternoon, didn't we?

A. I did; and I think you did, too.

Q. Now, you also stated if you stayed all night at Warsaw you stayed at the Adams House, didn't you?

A. I don't remember ever staying anywhere else.

Q. Didn't you say you never stayed anywhere at Warsaw except at the Adams House?

A. Not that I remember of.

Q. At no time in all those years? In fact that is all the practical hotel in Warsaw, isn't it?

A. Yes; well, I used to stop with Mr. Griffith when he lived there.

Q. But that was not on this occasion?

A. No; long after this.

554 Q. Now, didn't you say further that if the hotel—that if you stayed there you certainly registered, and if the hotel register didn't show you or Birch were there it would go a

great ways to convince you that you were not there at all; didn't you say that?

A. Yes; I said that, and that is true, too, because I know I was in the habit of registering.

Q. I believe on that occasion you further remarked that you never remembered going to the hotel without you registered, if you got a meal or anything?

A. That is what I said.

Mr. OVERALL: Do you object to the identification of this register?

Mr. KRUM: Just take your own course.

Q. If you went to Warsaw on the afternoon of the 20th, as you say, it was the same train that Gen. Drake and myself went on, was it not?

A. I don't think there was but one train on the road then.

Q. I believe you testified in your deposition that I was along with you on the train then, and you have also stated it was the first train that went to Warsaw from Memphis after the track was completed?

A. Immediately on the completion of the road.

Re-examination by Mr. KRUM, of counsel for defendant:

Q. Now, let me understand; do you mean to say now that no such occurrence as you have testified to on your examination-in-chief took place at Warsaw and that you were not there?

A. Certainly not.

Q. Sir?

A. Certainly not; I do not mean to say that.

Q. Well, what do you mean to say about this matter?

555 A. I mean to say that I admitted to Mr. Hughes in his office on consultation about this matter that if the register should show me certain facts and these parties should testify that I was not there that it would go very far to change my convictions on the subject, but that my present impressions and convictions were as they are to-day, that I was there and that the transactions took place, but still I am willing to concede that those impressions may have been placed on my mind by a misapprehension of the circumstances.

Q. Well, let us have them; what were they?

A. I don't know, unless——

Q. What led you to go to Mr. Hughes' office?

A. Sir?

Q. What led you to go this office in consultation, as you say, about this case?

A. Well, sir, I went to Mr. Hughes' office on entirely another matter. He is attorney for the Wabash, St. Louis & Pacific railroad, and I was garnisheeing an employee of the road and wanted to get his assistance in the matter of making my collection, and while there I met Mr. Hill, who had just come from Minneapolis; they were then in consultation about what my testimony had been.

Q. Who broached the subject—you or he?

A. Mr. Hughes.

Q. When was it?

A. Last Saturday a week ago. I don't remember the day of the month.

Q. It was understood, wasn't it, between you that you were to come here?

A. He asked me if I would come.

Q. He asked you if you would come?

A. Yes, sir.

Q. You did come, did you not, at his expense?

A. Yes; on a subpœna.

Q. Your expenses have been paid by Mr. Hill?

A. Yes, sir.

Q. Your deposition in this case has been taken how often?

A. Once.

556 Q. That was on file here?

A. Yes, sir.

Q. Now, I want to understand this business myself. I want you to state now, in so many words, to the jury, whether the answers which you gave me upon your examination-in-chief were merely manufactured testimony, either by somebody for you or by yourself independently, or facts in the case.

The COURT: That is hardly a fair mode of examining or putting the question to the witness; it carries an implication with it.

The COURT: From this examination has anything occurred to change your recollection of the transaction at the bank?

A. No, sir; nothing has occurred. I say what I stated to Mr. Hughes the other day.

Mr. KRUM: Now, let me ask you this: Do you desire to convey to the jury the idea that you have not testified in regard to the facts within your knowledge, or that what you stated to Mr. Hughes was that if testimony were brought sufficient to overthrow your testimony that it would lead to a doubt in your own mind on the subject?

A. Yes; it would lead to a doubt in my own mind on those points.

Q. Well, was there any other idea sought to be conveyed to him than that?

Mr. OVERALL: We object. The question is what he said.

Q. Well, upon what point did you indicate to him you would have a doubt?

A. Well, my impression, as I swore in my deposition, is that shortly after our arriving in Warsaw we went to the Adams House and took dinner. Now, that may have been from the custom of mine to always go to the Adams House when in Warsaw; but I thought so conscientiously, as I think I am sitting here now.

Q. Now, was it in reference to your going to the hotel to
557 dinner that you expressed this doubt to Mr. Hughes, or was it in reference to the occurrence which you say took place at the bank?

A. No, sir; the doubt which I thought might arise in my mind was in regard to the fact of our taking dinner or our not being at

the hotel or not registering there, and the other fact, if so be the testimony should be that, that I could not have been at Warsaw overnight and that I possibly was not there at all, because my recollection is just as distinct that we were there overnight as any other incidents which I have related; that is what I meant to say, but it is all so long ago, and for 10 years or 12 years or 13 years I hadn't thought anything at all about it. I was on the other side of the case.

Q. When was your deposition taken?

A. I don't know, sir; this fall some time. I don't remember exactly what date. I think in August, possibly.

Q. You hadn't had any conversation with Mr. Hughes before the deposition was taken?

A. No, sir; not on that subject. I had frequently had conversations with him.

Q. But since your deposition was taken you had this conversation?

A. Yes; a week ago last Saturday; after he had read the deposition I had the conversation with him.

Q. Well, do you wish to be understood as saying that no such conversation as you have testified to occurred?

A. No, sir; I wouldn't like to be understood that way, for I am not satisfied yet but what it did occur, but I said that if the evidence should be as was intimated to me it was, then I would have some doubt, but I have not heard that evidence and I don't know, but in the present condition of mind the evidence is as I have stated; the occurrences were about substantially as I have stated;
558 they may not be so on some minor, unimportant things, but my present best recollection and impression is that, as nearly as a man can recollect in 15 years, the transactions were about as I have stated, but circumstances might be developed in the evidence, and I am told will be, that might shake my judgment somewhat.

Q. Well, have you any doubt in your own mind that you were in Warsaw as you have testified in chief?

A. No, sir; I don't have any doubt about it in my own mind.

Q. Have you any doubt in your own mind that the conversations to which you testify took place?

A. None; no, sir.

Recross-examination by Mr. HUGHES:

Q. The defendant took your deposition at Memphis, didn't he?

A. Yes, sir.

Q. And Gen. A. J. Baker, who was here yesterday, appeared to cross-examine at the time, didn't he?

A. Yes, sir.

Q. Now, when you were in my office at this time and the matter came up about your recollection with mine, and others, while you said to me there that it seemed like a dream you expected that John Baker would cross-examine you at Memphis particularly and in that cross-examination would bring to mind a great many things, and you regretted that——

Mr. KRUM: Are you testifying now?

Mr. HUGHES: No, sir; and you regretted that I had not been there to ask you these questions; didn't that occur?

A. Well, I regretted that I had not made this explanatory statement or explained my evidence in the deposition.

Q. And that you said you rather regretted that I had not been there to cross-examine, because it might have suggested
559 things to your mind and brought your memory home to you, but it appeared like a dream; then I said, If we subpœnaed you here would you come, obey the subpœna, and come here and give your testimony? and you said you would be glad to do so.

A. Yes; that is a fact.

Q. And thereupon you accepted service of the subpœna and you are here for that purpose?

A. Yes, sir.

Q. Money was advanced to you to bring you here, it being more than 100 miles distant?

A. Yes, sir.

Q. That was all the conversation that occurred between us?

A. Yes, sir.

The COURT: Perhaps you gentlemen can admit this fact (I do not know that all the jury are familiar with the geography up there): This road runs from Alexandria. How was Alexandria from Warsaw?

WITNESS: Right across the river—the Missouri side of the river.

Q. This road runs from Alexandria, through Clarke county; Memphis is further west, so that when a party got to Alexandria he could cross the river to Warsaw?

A. Yes, sir.

Q. Is there any bank at Alexandria?

A. No, sir.

Q. There is one bank at Warsaw?

A. Yes, sir.

Q. I understand you to say the headquarters of this particular road were at Warsaw, across the river, and the bank was there?

A. Yes, sir.

At this point the court adjourned until to-morrow.

560 OCTOBER 14, 1885.

The court met pursuant to adjournment and the trial of this cause was resumed.

Mr. CUNNINGHAM: We wish to offer evidence to show that there was no election of the qualified voters of Scotland county, resident voters or tax-payers of said county, and I presume it will be admitted. We offer to prove the bonds do not pretend to recite an election. We offer to prove there was no election held in Scotland county to ascertain the sense of the tax-payers of said county as to any subscription to the capital stock of the Missouri, Iowa & Nebraska Railroad Company or of any other company, or to ascertain

the sense of the tax-payers of said county as to whether such subscription could be paid by the issue of county bonds or by taxation, or for or against paying such subscription by direct taxation; that at no time, at any election ever held in said county of Scotland, have a majority of or any of the resident voters of said county of Scotland, in the State of Missouri, voted in favor of any subscription by said county or by the county court of said county to the capital stock of the Missouri, Iowa & Nebraska Railroad Company or of any other company; that at no election, whether general or special, ever held therein have ⅔rds of the qualified voters of said county of Scotland, in the State of Missouri, ever demanded any subscription to the stock or any loan of the credit of said county of Scotland to the Missouri, Iowa & Nebraska Railroad Company or to the Alexandria or Bloomfield Railroad Company.

Mr. HUGHES: We object to that as incompetent; it is not controverted by the replication.

Mr. CUNNINGHAM: It is admitted that we can prove these facts, to save all trouble.

561 The COURT: That will take us back to some of the recent rulings in regard to this matter. The point involved in that was passed on by the Supreme Court of the United States, wasn't it?

Mr. CUNNINGHAM: Certainly; 94th United States. I merely desire to save the point as a part of my pleadings.

The COURT: It is understood that it is offered, objected to and overruled, and the facts admitted.

Mr. CUNNINGHAM: We now propose to read the deposition of Henry Hill.

Mr. OVERALL: He is present in court.

Mr. KRUM: This is William Hill. We desire to read the deposition of the plaintiff in this case as an admission made by him. We have the original of one, but can't find the original of the other.

Mr. OVERALL: It is printed in the book, and it is not denied.

Mr. KRUM: You consent that we may read this?

Mr. OVERALL: It is printed in the book.

The deposition of William Hill was then read from the book referred to, certain portions of which were objected to by counsel for the plaintiff.

The second deposition of William Hill, taken February 23, 1880, was then read.

S. W. Birch.

Defendant next called as a witness S. W. BIRCH, who, being duly sworn, testified as follows:

Mr. KRUM:

Q. Where do you live?
A. Hannibal, Missouri.
Q. What is your occupation?
A. My occupation now is running a newspaper.
562 Q. What paper?

A. The Hannibal Courier.

Q. In the month of September, 1871, where did you live?

A. I lived at Memphis, Scotland county, Missouri.

Q. Do you know anything of the delivery of the first installment of Scotland county bonds by Mr. Mety?

A. I don't know about the delivery, except what I heard of it; I don't know of my own personal knowledge of the delivery.

Q. Did you know anything of the institution of the suit of Wagner in Scotland county, to prevent the delivery of those bonds?

A. Yes, sir.

Q. Wagner against Mety and others.

A. Yes, sir; I saw that suit when it was filed; I saw the filing of it and read the petition at the time.

Q. Do you know whether after that suit was filed Mr. Mety went to Warsaw?

A. Yes, sir; Mr. Mety consulted me about the suit before he went to Warsaw.

Q. On what day did he first confer with you?

A. I don't know, sir; I think a day or two—perhaps the same day the suit was filed; I don't know what day and I don't know what time the suit was filed only by the record that I have seen here.

Q. Did you go to Warsaw with Mr. Mety?

A. No, sir; I didn't go to Warsaw with Mr. Mety; I went there, though.

Q. Did you go up on the same train with him?

A. No, sir; I think not.

Q. Did you go there on the same day that he went there?

A. I think not, sir; I think he went there before I did; I don't know when he did go.

Q. Are you able to state how long before you went Mety went?

A. No, sir; I am not. It might have been the day before; I don't know; I can't say—that is, I don't know how long it
563 was before I went; he went down before I did. I met him at the wharf before I went over as we crossed over to the other side.

Q. Who accompanied you to Warsaw?

A. Mr. Mackey and Mr. Hughes.

Q. Mr. Mackey is the witness who testified yesterday?

A. Yes, sir; Mr. Hughes went along too.

Q. You say you met Mr. Mety at the wharf?

A. Yes, sir; at Warsaw, when we crossed on the boat.

Q. Who was with him?

A. Well, sir, I don't know; I don't recollect; my impression is his son was with him—that is, C. G.

Q. From the wharf where did you go?

A. Went up to the Adams House.

Q. Did Mr. Mety accompany you?

A. Yes, sir.

Q. Did Mr. Mackey accompany you?

A. Yes, sir.

Q. About what time of day was it when you got there?

A. It was in the evening—along in the evening pretty late; that is my impression; I don't know what time it was; I can't recollect about that, but it was before dark.

Q. Did you see the plaintiff in this case, Mr. William Hill, on that occasion?

A. Yes, sir.

Q. Where did you see him?

A. I saw him in the bank—national bank—First National Bank, of Warsaw.

Q. Did you have any conversation with him?

A. Yes, sir; he was introduced to me.

Q. Did you have any conversation with him in reference to the occasion of Mety's being there?

A. Yes, sir.

Q. State to the jury what the conversation was.

A. Well, sir, I can't do it. I will say this much, though; the substance of the consultation was—the conversation was in relation to why Mety was there; what the words were I can't swear.

564 Q. You talked about the occasion of Mety's being there, but you can't give the language used?

A. Yes, sir; I can't give the language at all; I don't recollect now.

Q. Where do you say in Warsaw the conversation took place?

A. In his bank; Mr. Mety, at the same time that I was there—it was in the morning at the same time I was there; he was transferring the bonds—that is, he was writing on the bonds, sitting at the table.

Q. Countersigning?

A. Countersigning; that is the word I wanted to give.

Q. Can you state whether anything was said of the bond of indemnity in this conversation?

A. No, sir; I think there was nothing said about that; I don't think they spoke about the bond of indemnity in Mr. Hill's presence—that is, William Hill; if there was anything said I don't recollect it.

Q. You say you are unable to give the jury what was said between Mr. Hill and yourself?

A. I can't tell it; I don't know what the words were; the substance, the subject of the conversation, was about Mr. Mety's coming there, and that he came——

The COURT: What is that; I can't hear?

WITNESS: And about the suit that was then pending in the Scotland county court and in Waterloo.

Q. By the way, where is Waterloo?

A. Waterloo is in Clarke county, 6 or 7 miles north of the railroad.

Q. About how far from Warsaw?

E. It is 15 miles they call it to Kahoka; it is 12 to 13 miles to Clarke City, and Clarke City is about 6 or 7 miles south of Waterloo; the railroad runs through Clarke City.

Q. Are you able to state whether you told Mr. Hill that; or,
565 in the first place, when you spoke of the suit in Scotland county, what suit did you refer to?

A. I referred to the suit that was filed there.

Q. By what plaintiff?

A. By Levi J. Wagner and others, citizens of Scotland county.

Q. And against whom?

A. Against Charles Mety and the Missouri, Iowa & Nebraska Railroad Company, Fullerton and the three county judges; James S. Fullerton was treasurer of the county at the time.

Q. Now, are you able to state to the jury whether you told Mr. Hill there was such a suit as that pending?

Mr. OVERALL: We object; let the witness state what was said.

A. Well, now, I only can say that that was the subject of conversation in the bank and what I told him; the words that I told him I cannot possibly tell them now, but it was the subject; it was a subject of conversation there in Mr. Hill's presence in the bank.

Q. Did you and he talk about it yourselves?

A. Yes; we talked about that matter, but what my words were or his words were it would be very difficult for me to say now, but in 1879 I will say, in addition to that, when these depositions were taken at Alexandria, I then recollected the conversation better than I do now; I took those depositions that were first read here at Alexandria, across from Warsaw on the other side of the river, and I perhaps recollected the conversation better then than I do now.

Q. Was there any other hotel in Warsaw than the Adams House?

566 A. Yes, sir; there was another hotel on the corner, as you pass up the street, on the right hand; I don't know what they call the house; it was kept, as I understood then, by a widow lady, but I don't know what the name of it was.

Q. Did Mr. Mackey go to the bank with you from the hotel?

A. In the morning?

Q. Or when you left the Adams House?

A. Mr. Mackey was with me when we went to the bank in the morning; before we went back home we went to the bank in the morning before the bank was open, and while we were there the bank was opened, and Mr. Mackey was with me.

Q. Did he remain?

A. He remained; he went with me when we went home—went back.

Q. Are you able to state whether he was present when this conversation was going on?

A. No, sir; I can't tell about that; I am not sure.

Q. You don't remember as to that?

A. He may have been; he may have been present; he may have been in another part of the bank; I don't remember; it was the only time I was ever in the bank, and I don't recollect about the rooms in the bank or how they were; it was the only time I was ever in that bank.

Q. Are you able to tell the jury where it was Mr. Mety was countersigning these bonds?

A. Well, sir, he was sitting at a stand or table, and that is all I can tell about it.

Q. As I understand you, this interview with Mr. Hill took place on the morning after you went there?

A. Yes, sir; after we went there; in the evening after we went there; after we were there, while we went to the railroad office, a few doors from the bank.

Q. Where did you and Mr. Mety stay that night?

A. Well, sir, my impression is that we ate our suppers at
567 the Adams House, and that we afterwards stayed across at that other place; that is my impression; I think we ate our suppers before we went to the railroad office—at the Adams House.

Q. Is your recollection distinct as to where you stayed?

A. My recollection is very distinct, sir, that it was the first time I ever saw Mr. Adams—the first time I ever ate in that house; I was introduced to Mr. Adams in the bar-room, and we went in to where the officers of the railroad, Hill and Drake, were in the other room; we went in there and from there to supper, and from there we went to the railroad office up on the street there, and we remained there that night.

Q. That is in Warsaw?

A. I mean to do what business we did in the office there that night, in the railroad office—until some time in the night; I don't know what time.

Q. What relation, if any, did you bear toward the railroad at that time?

A. Well, sir, I was acting as an attorney in that matter and in other matters that—well, in the first place I commenced as an attorney in getting the right of way, and then whatever business was to be done in the county or at a distance, as far as that matter was concerned, I was one of the attorneys.

Q. Was Mr. Mackey associated with you?

A. Yes, sir.

Q. Well, after you finished your business at the railroad office where did you go to pass the night?

A. We went to the hotel—to that house on the other side of the street—where we stayed all night; if we went to the Adams House we stayed there; I don't recollect that as to the Adams House.

Q. You don't remember at which hotel you passed the night?

A. No, sir; I recollect this, and what makes me think that we perhaps stayed at the other place was this, that I think that
568 is the only time I was over in that house; I have been three times at Mr. Adams' house, including that one, and I know I have been in the other house, and my impression is that we stayed there that night; I have been three times at Mr. Adams' house; I can designate the times that I have been there and what took me there if necessary.

Q. Had you been employed by the railroad company to look after this case of Wagner and others against the railroad company?

A. Yes, sir; I went to Lewis county.

Q. And at the instance of what officers of the road did you do that?

A. Well, sir, Mr. Drake, I think, and Mr. Hill.

Q. Which Hill?

A. Why, Henry Hill, and especially Gen. Drake; I consulted about it; he was a lawyer himself and we consulted in relation to it.

Mr. KRUM (to Mr. Overall): You can take the witness.

The WITNESS: I do not wish to volunteer testimony in this thing, but there has been some dispute about this bond, and I would like to give my interviews about it; that is all I care about it; I am not very particular about it—about this indemnifying bond—and that is this, Mr. Drake: I want to tell my story about it anyhow. The night we went there Mety had the bond drawn up by Judge Schofiled. That bond we looked over and concluded it was too severe a bond, pretty tight and close on the parties that would sign it, and they objected to it, and we went into the railroad office and I sat down and wrote a bond and Mr. Hughes did the same thing. Mr. Mety was sitting over at another table and writing. Whether he was writing a bond or not—I think he was writing a bond, but I wrote a bond and Mr. Hughes wrote a bond, and Mr. Hughes' bond was accepted right there.

569 Q. Is this the bond which you say Mr. Hughes drew? (Paper shown.)

A. Yes, sir; that is the bond written in that office that night.

Q. Do you know Mr. Hughes' handwriting?

A. Yes, sir; I do.

Q. Is that it?

A. Yes, sir; that is Mr. Hughes' handwriting; there is no question about that, to my mind, and that bond was written on the table there, or the counter, or whatever it was, in that railroad office, that night.

Cross-examination by Mr. HUGHES:

Q. What time do you say the track was completed to Memphis?

A. The time, Mr. Hughes, I can't tell anything about the date, only as I see on the instrument of writing.

Q. What time of day I mean?

A. Oh, I don't know.

Q. Did you go down to Warsaw, to Alexandria, on the first train that left Memphis after the track was completed?

A. I don't know whether I did or not.

Q. You don't know whether you did or not?

A. No, sir; I don't; I know I was there, though, when Mr. Mety was there.

Q. Were you in Memphis when the track was laid up to the depot?

A. Yes, sir.

Q. Did you go down on the construction train at the same time?

A. I went on the construction train; whether it was the first train that went down I don't know.

Q. There was no other train on the road, was there, when you went down?

A. This is, I think, the only one.

Q. Then, if you went down at all, you went down on that train?

The COURT: The jury can't hear the witness.

570 Q. Now, do you know what time of day we got to Warsaw?

A. I think late in the evening—before dark—before sundown.

Q. You think you went to the Adams House and got your supper?

A. I think so.

Q. I know you thought you stayed all night, but you couldn't tell certainly?

A. No, sir.

Q. Haven't you thought that?

A. I haven't thought that; I never thought about the question until it was raised here.

Q. Hasn't it been the subject of conversation since?

A. Yes, sir; we have conversed about it, Mackey and I, and all of us, and you too, I believe, with the rest; we have all consulted about it; Mr. Mackey and I and Henry Hill and some others.

Q. Now, then, you think you went over to the bank?

A. I know we went to the bank in the morning.

Q. You say it was towards night that you went to the bank—after supper?

A. No, sir; I didn't say so.

Q. You went to the railroad office after supper?

A. Went to the railroad office after supper.

Q. There is where you say this indemnity bond was drawn up?

A. No, sir; I didn't. I say there was only one indemnity bond; I wrote an indemnity bond there, but it wasn't——

Q. I refer to the fact that you said you wrote one?

A. Yes, I wrote one and you wrote another.

Q. Then where did you go?

A. I think we went to that other hotel, though I am not sure about that, Mr. Hughes.

Q. You never stayed at any other hotel than the Adams House in your life, did you?

A. No, sir; but I wasn't on expenses that night and I had to go where they sent me.

Q. Why didn't you go with the rest of us?

A. I don't know where you went; I may have gone to the Adams House; I don't know about that.

571 Q. You say you can tell the three times you were at the Adams House and the occasions?

A. Yes, sir.

Q. Now tell.

A. Well, I tell you that is the first time I was ever at the Adams House and the next time was Mr. Mackey and I were there for a purpose, and Mackey wrote an application as attorney for the road, about the time you were appointed general attorney for the road;

we sent in a proposition; we went there that day together, and how long we stayed I don't recollect, and we went from there to Keokuk, I think.

Q. What did he write an application for?

A. To be appointed attorney, the same time you was appointed general attorney of the road.

Q. Now hold on; when was that?

A. Well, sir, I don't know.

Q. That is the second occasion you were there?

A. Yes, sir; I don't know when that was.

Q. You know that is the time, the second occasion, and the time that you went for the purpose of being appointed general attorney or something of the road?

A. Yes, sir.

Q. Now, that is the second; now, the third?

A. The other time I went to meet a man who came from Chicago.

Q. About how long after was that?

A. I don't know how long; not a great while.

Q. How long after this first time you were there were you there the second time, in your judgment?

A. I can't tell; it would be merely a guess if I gave it at all, Mr. Hughes.

Q. Do you think as much as a year?

A. It might have been a year or six months or five years; no; it wasn't five years.

Q. Now, do you remember it was about the time there was an appointment of the general attorney of the road?

A. No, sir; I recollect that appointment was made afterwards.

572 Q. You know that I was appointed?

A. The appointment was made after you were there; I don't know how long.

Q. Can you tell anywhere near—a month or six months?

A. No, sir; I cannot; I would have merely to guess at it.

Q. Now, were you at Waterloo?

A. Yes, sir.

Q. At the application for this temporary injunction?

A. Yes, sir; you and I were there and stayed all night; we struck a boarding-house there; Rufe Anderson was there telling his long dirty yarns, you know, and I introduced you to him there that night; you recollect that, don't you?

Q. What night was that you stayed all night at Waterloo?

A. I don't know; it was the night we were there, whatever night it was, on that occasion.

Q. Did you stay there after you got through with the case or before?

A. I stayed after we got through with the case.

Q. Do you know what time of day we got through with the case?

A. I do not; I suppose in the afternoon; I think like enough it was, though I don't know. I know this, Mr. Hughes, I went down

there with Col. Bishop in his buggy; rode to Waterloo with Col. Bishop; how you went down I don't know, unless you went in a hack; I went with Col. Bishop; I was acquainted with him in Jefferson City; the old treasurer of the State.

Q. How did you get from Warsaw to Waterloo?

A. We went up to Clarke City on the road.

Q. On the train?

A. On the construction train; went up the next day.

Q. How did you go from there?

A. I told you I went from there with Col. Bishop in his buggy.

Q. Now, Mr. Birch, don't you know the construction train came out in the morning?

A. I don't know any such thing.

573 Q. On its regular business to go to the end of the line, where they were continuing the road?

A. I don't know.

Q. Don't you remember that the construction train came up in the morning from Warsaw to Waterloo and you walked over from there?

A. I say I am sure I did not; I never walked from Kahoka to Waterloo in my life.

Q. Do you know I was on that train coming out that morning?

A. I suppose you were, but I never walked from Waterloo in my life.

Q. Don't you know I was on the train, and don't you know we went down; don't you know we came out that morning?

A. Most certainly I think you were; yes.

Q. Then you think you rode there, and you don't know how I got there?

A. I think you went there; I don't know how; I don't recollect; I suppose I knew at the time; I know I walked back, and walked with you.

Q. Don't you know when we got to Waterloo the understanding was the first 100,000 of bonds had been delivered the day before?

A. Yes.

Q. And we were consulting —— & Anderson, attorneys on the other side, and we just agreed to suspend the order for two weeks until Judge Wilson should hold court at Memphis; we agreed on that and he signed an order, which is in record, and that is the end of it?

A. Well, that may have been; I don't recollect about that.

Q. And that there was no argument on the presentation to Judge Wilson, only handing him that paper, and he signed it, as the record shows?

A. That may be.

Q. Now, wasn't that in the forenoon of the day we presented it?

A. I think not.

574 Q. You think not?

A. Most certainly I think not.

Q. Why would it be in the afternoon?

A. The reason I think it was in the afternoon is because I think

we didn't get there until the afternoon; that is the only reason I have for it, but I don't know what time of day it was; I can't tell.

Q. That is the day it was set for hearing, wasn't it, at Waterloo?

A. What day?

Q. The application for a temporary injunction.

A. What do you mean by day?

Q. How? Hadn't the attorneys for the county in this Wagner suit given notice that on the 21st day of September, 1871, they would apply to Judge Wilson at Waterloo, in Clarke county, for a temporary injunction?

A. I don't know, sir; only what the record shows.

Q. Very well; I say if the record shows that it is true?

A. I suppose so; yes.

Q. You were attorney for the road and were to be there, you say, and was there?

A. Yes.

Q. Now, isn't it very probable that you went out as early in the moring as you could do to be there that day?

A. I think likely.

Q. Then don't you think we came out in the morning and went from there; after we got through that we came back and went to Memphis that evening?

A. No, I don't; from the very fact I was in the bank when it was opened; that is the only time I was ever there in the bank, and that is the reason I think it was not until after the bank was opened, but I don't know what time they opened, and that is the reason I think we didn't come out as early as you think, for it don't take them more than an hour to run up to Clarke City and to Kahoka; about an hour.

575 Q. You were formerly attorney for the road, and then you wasn't?

A. I was attorney for the road, and then I wasn't; yes; that is a fact.

Q. Well, you wrote this bond and drew the answer in the Wagner case, in which you declared that the bonds for the sale and delivery to *bona fide* purchasers was in good faith?

A. Did I draw that answer?

Q. I presume you did; it is in your handwriting and Mackey's.

A. Is it in my handwriting?

Q. Isn't it, or Mackey's—but you don't know which one of you?

A. I expect we drew that answer, and whatever the answer set up we did it—that is, the best we knew how.

Q. Now, since that time you have become attorney for the county in opposition to these bonds?

A. Yes, sir; but I am not attorney now; not in this case.

Q. But you were attorney when this deposition was taken?

A. I was attorney when the depositions were taken; yes—that is, the first deposition of Mr. Hill.

Q. You have taken a very great interest in opposition to these bonds in the last few years, haven't you?

A. Yes; I have that.

Q. You have done your best?

A. Because I thought the county ought not to pay them.

Q. And you were one of the principal members of what is called the tax-payers' league up there, were you not?

A. No, sir; not principal; I was one of them, though.

Q. And when the collector levied on some of your property at the time to obey the mandamus of this court, to collect the tax levied under the mandamus of this court, you replevined your property from the officer?

A. I most certainly did, and that case is pending yet.

576 Q. And that case is pending yet?

A. We propose to beat it, too.

Q. Pending yet; that is what I supposed; that is all.

Mr. KRUM: That is our case.

This was all the evidence offered by defendant.

Plaintiff here offered an instruction to the court, which the court overruled.

Testimony for the Plaintiff.

C. H. Mellen.

CHARLES H. MELLEN, being recalled on the part of the plaintiff, testified as follows:

Mr. OVERALL: The coupons in this case all matured prior to the first day of January, 1880.

The COURT: And this suit was instituted when?

Mr. OVERALL: 1878.

Q. Under the laws of New York the coupons made payable in New York bear 7 per cent. intererst. State whether you have made an examination or calculation of the amount due on the coupons in this suit and calculated the interest on them from maturity at the rate of 7 per cent. per annum.

The COURT: This is the Hill suit?

Mr. OVERALL: Yes.

WITNESS: Yes.

Q. Is this your memorandum?

A. Yes, sir.

Q. How much is the total amount due up to the present time on the coupons remaining in this suit, calculating the interest at 7 per cent. to the date of maturity?

A. $46,944.

577 The COURT: Computed up to when?

A. Up to last night.

Mr. OVERALL: The witness has further calculated interest on each set of coupons and bonds purchased from different parties; I will ask as to those.

Q. How much is due on the coupons detached from the bonds in the testimony of Kirk and Toby?
A. $27,361.80.
Q. Of A. B. Stone coupons detached?
A. $3,247.80.
Q. Of Secor?
A. $5,061.60.
Q. Of Gebhart?
A. The same.
Q. Of Hough?
A. $2,329.20.
Q. Of Gaylord?
A. $2,329.20.
Q. And yours, Mellen?
A. $1,582.80; total, $46,944.
Q. Was this paper made by you?
A. I was assisted by Mr. Hill.
The COURT: Have you gone over the computations yourself?
A. Yes, sir; I made the interest calculation myself; it was by taking the coupons number ones, so many number ones and so many number 2's.
Q. And the time when they were due, etc.?
A. Yes, sir.
Q. They were all payable in New York, were they?
A. Yes, sir.

This was all the evidence offered by plaintiff.
Mr. Cunningham here asked certain declarations of law, which were read and refused.

Said declarations of law are in the words and figures following, to wit:

578 *Declarations of Law.*

WILLIAM HILL, Plaintiff, *vs.* SCOTLAND COUNTY, IN THE STATE OF MISSOURI, Defendant.	Nos. 1153 and 1287. Consolidated.

The court declares the law to be that an act of the General Assembly of the State of Missouri entitled "An act to amend 'An act to incorporate the Alexandria and Bloomfield Railroad Company,' approved Feb'y 9th, 1857, authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri, and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company," approved Feb'y 19th, 1866, was and ever since has been inoperative, null, and void, because said act was not in conformity with, but was repugnant to, the organic or constitu-

tional law of the State of Missouri then—*i. e.*, Feb'y 19th, 1866—in force in the State of Missouri; that said act did not confer upon the Alexandria and Bloomfield Railroad Company the right to change its corporate name or any of the several rights in said act set forth.

That the plaintiff herein has not offered competent or sufficient evidence that the privileges of the Alexandria and Bloomfield Railroad Company under its charter of Febr'y 9th, 1857, ever lawfully passed to or vested in the company designated as the Missouri, Iowa and Nebraska Railway Company, and that in the absence of such evidence of transfer of said privileges there was no power in
579 the county court of Scotland county, in the State of Missouri, to subscribe stock in or issue bonds to the said Missouri, Iowa and Nebraska Railway Company without the condition precedent of the assent of two-thirds of the qualified voters of such county at a general or special election therein held, and it has been admitted that no such election was held; that in the absence of a lawful transfer of said privileges of said Alexandria and Bloomfield Railroad Company to said Missouri, Iowa and Nebraska Railway Company the county court of Scotland county had no power to estop said Scotland county by any recitals contained in the bonds alleged to have been executed by authority of said county court, because the act of the General Assembly of the State of Missouri entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved Feb'y 9th, 1857, under the sole authority of which said bonds allege same to have been executed, did not vest said county court with power to make bonds to the Missouri, Iowa and Nebraska Railway Company, or to determine whether there had been consolidated in said last-named company the Alexandria and Nebraska City Railroad Company and the Iowa Southern Railway Company, or to determine whether said Alexandria and Nebraska City Railroad Company was formerly the "Alexandria and Bloomfield Railroad Company." The recitals in said bonds offered in evidence by plaintiff made it the duty of every purchaser of such bonds to enquire whether there was legislative authority in the Alexandria and Bloomfield Railroad Company to change its name to that of the Alexandria and Nebraska City Railroad Company. Every purchaser of such bonds was bound to know that the only attempt of the Legislature to confer such authority was contained in the unconstitutional and void act hereinbefore referred to. Such being the law applicable to this case, the jury must find for the defendant.

580 WILLIAM HILL *vs.* SCOTLAND COUNTY. } Nos. 1153 & 1287. Consolidated.

The court declares the law to be that under the pleadings herein plaintiff cannot recover upon any coupon declared upon in the second count of his petition unless he has first established affirmatively to the satisfaction of the jury that such coupon was the act and deed of Scotland county, Missouri. It is not sufficient that plaintiff may have shown that the signatures of the persons pur-

porting to have executed the several bonds are those of the presiding judge of the county court of Scotland county and of the clerk of said court, and that said bonds are sealed with the seal of said county court. It is encumbered upon plaintiff further to show that the county court, by an order upon its records made, empowered said persons to execute said bonds; that the county court of Scotland county aforesaid had authority to make such order, and that the coupons aforesaid were detached from said bonds of the county — court aforesaid had authority to make such order. Plaintiff has, nevertheless, failed to offer competent evidence of such fact, and the jury must find for defendant.

WILLIAM HILL *vs.* SCOTLAND COUNTY. } Nos. 1153 & 1287. Consolidated.

The court declares the law to be as follows:

If the jury find from the evidence that the sixth maturing coupons from bonds numbered 12, 11, 38, 79, 78, 80, 88, 136,
581 135, 137, 10, 162, 161, 160, 179, 26, 25, 35, 36, 37, 27, 36, 42, 39, 40, 140, 46, 45, 44, 71, 56, 57, 139, 141, 138, 85, 104, 105, 103, 102, 101, 106, 159, 134, 158, 89, 133, 77, 84, 76, as described in the 7th, 8th, 9th, 10th, and 11th counts of defendant's answer, were filed in the cases of William Hill against Scotland County, numbered 752; James B. Dodge against Scotland County, numbered 753, and C. H. Mellen against Scotland County, numbered 754; Manning *vs.* Scotland County, No. 755, and that said several coupons were computed and merged in the several judgments in said cases rendered in this court on the 25 of September, 1877, and that the records of this court show that said term of the United States circuit court for the eastern district of Missouri, at which said judgment of September 25, 1877, were rendered, terminated before April, 1878, and then no order of this court made, as shown by plaintiff's evidence, to have been entered in mandamus proceedings in said several causes on the 30 of April, 1878, authorized the withdrawal of said several coupons in said several cases, or made it lawful for plaintiff in this cause to maintain an action upon either of said coupons; on the contrary, as to each of such coupons the jury are instructed that plaintiff cannot recover a judgment herein.

WILLIAM HILL, Plaintiff, *vs.* SCOTLAND COUNTY, IN THE STATE OF MISSOURI, Defendant. } Nos. 1153 & 1287. Consolidated.

The court declared the law to be that even though the jury may find for the plaintiff upon any of the issues in this case made,
582 it being conceded that the obligations sued on were not authorized by the assent of the majority of the tax-payers of said county of Scotland or by the assent of a majority of or of two-thirds of the qualified voters of said county at any general or spe-

cial election therein held, the sole authority for the issue of said bonds rests upon the 10th section of the act of General Assembly of the State of Missouri, entitled an act to incorporate the Alexandria and Bloomfield Railroad Company, approved Feb'y 9th, 1857, which section provided that said company should in all things be subject to the same restrictions and entitled to the same privileges, rights, and immunities which were granted to the North Missouri Railroad Company by an act entitled an act to incorporate the North Missouri Railroad Company, approved March 31st, 1851, as far as the same were applicable to the company created by said act of Feb'y 9, 1857, said charter power did not authorize the levy of special taxes for the payment of county bonds issued solely under said power, said law conferring such authority to issue bonds and the general laws in force in the State of Missouri on the 9th of February, 1857, clearly manifest a legislative intent to limit the payment of such bonds to the general county fund, and such limitation must enter into any judgment which plaintiff may recover herein.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant.
} Nos. 1153 & 1287. Consolidated.

The court declares the law to be that if at the time or times of making purchases of either of the coupons in this suit declared upon William Hill, the plaintiff, had actual knowledge of
583 the pendency of or judgment in case of Levi J. Wagner *et al. vs.* Charles Mety *et al.*, and if the jury so find they are instructed that as to any such coupon purchased by plaintiff, whether for himself or as agent for other persons, no recovery of judgment can be herein had.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant.
} Nos. 1153 & 1287. Consolidated.

The court declares the law to be as follows: If the jury find from the evidence that during a vacation of the county court of Scotland county, Missouri, about the month of July, 1871, the bonds from which coupons sued on were detached were executed by William Dawson signing his name as presiding justice of said county, and by Sterling McDonald signing his name as clerk of said court and affixing the seal of said county court to each of said bonds, and that no other order for the execution of said bonds had been made by said county court, except the order of said court, dated August 9, 1870, offered in evidence by plaintiff, then the jury are instructed that there was no authority in said officers to insert in said bonds the words reciting that the Alexandria and Nebraska City Railroad Company was formerly the Alexandria and Bloomfield Railroad Company, or the words reciting that said bonds were issued under and pursuant to an order of the county court for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri, entitled "An act

to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9, 1857, and the county, defendant, cannot be estopped by said recital from denying that the privileges of
584 the Alexandria and Bloomfield Railroad Company had vested in the Missouri, Iowa and Nebraska Railway Company.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } Nos. 1153 & 1287. Consolidated.

The court declares the law to be that if the jury believe from the evidence that William Hill, the plaintiff herein, did, before the time at which he purchased either of the coupons in this suit involved, have actual notice of the pendency of the suit instituted by Levi J. Wagner *et al. vs.* Charles Mety, in the circuit court of Scotland county, in the State of Missouri, and thence carried by change of venue to Shelby county, Missouri, in the circuit court of which last-named county the judgment was rendered, a transcript whereof has been offered in evidence by defendant, Scotland County, then the jury are instructed that as to each and every coupon in this suit involved which said William Hill purchased at any time after having actual notice of the pendency of said suit of Wagner *et al. vs.* Mety *et al.*, plaintiff cannot recover a judgment herein, but as — each and every such coupon the jury must find for the defendant.

Endorsed: "Refused by the court. Filed Oct. 14, 1885. A. P. Selby, clerk."

585 Mr. CUNNINGHAM: Since your honor will mark these declarations of law "refused," I think we can agree that they should be taken as refused in the other cases also.

The COURT: Of course, I consider them common to all.

Mr. CUNNINGHAM: I desire to ask the court either to grant or refuse these declarations of law, and if your honor refuses so to do I desire to except to your ruling.

The COURT: You have the right to except. I will, however, put at the head of the instructions "refused," and instead of instructing the jury as requested by the plaintiff and defendant respectively the court will instruct them as follows, and then I substitute for the whole of these instructions what I have prepared, and if I have not covered the ground as you request then there is error.

Mr. CUNNINGHAM: I think the Supreme Court requires we shall note all exceptions.

The COURT: You except to this?

Mr. CUNNINGHAM: Yes, to the declaration of law made by the court, because it takes from the jury the right to pass on the material issues of fact presented, and especially takes from the jury the right to pass upon the question as to whether William Hill——

The COURT: Repeat that.

Mr. CUNNINGHAM: I understand the Supreme Court to say I must point out that part of the charge to which I except.

The COURT: Very well, state it.

Mr. CUNNINGHAM: I except because it takes from the jury the right to pass on the question as to whether William Hill, having actual notice of the pendency of the suit, would not be precluded from recovery in this action.

The COURT: Of course, there is the main strain of the case.

586 (The court then charged the jury as follows:)

Charge to the Jury.

In the Circuit court of the United States for the Eastern District of Missouri. September Term, 1885.

WM. HILL *vs.* SCOTLAND CO.

CHARLES H. MELLEN *vs.* SCOTLAND CO.

FIRST NATIONAL BANK OF WARSAW *vs.* SCOTLAND CO.

Charge to the jury, October 14th, 1885.

TREAT, *J.*:

GENTLEMEN OF THE JURY: There are three cases submitted to you, and they depend essentially upon the same propositions of law. The court has reduced to writing the views which must control these cases.

The court declares the law to be that the plaintiff in each case is entitled to recover on all such obligations sued on, respectively, as he has proved were executed and delivered in manner and form as stated—that is, duly signed by Dawson, the presiding justice of the county court of Scotland county, and Sterling McDonald, clerk of said county, and countersigned by Charles Mety, under seal of said county.

Concerning the signatures there seems to be no dispute. There are some questions of law connected therewith, which have been presented, as to which you need not be troubled. Excep-
587 tions have been saved by counsel; but the court instructs you that these bonds purport to be signed by Dawson, the presiding justice, by Sterling McDonald, the clerk, and countersigned by Charles Mety. I suppose there is as to said signatures no dispute as a matter of fact. Now, producing these bonds, which are negotiable in their character, together with the coupons attached, the plaintiffs, respectively, will be entitled to recover, unless it has been proved that the plaintiff and each of the persons through whom he derived title to said obligations had actual notice of the pendency of the suit of Levi J. Wagner *et al. vs.* Mety *et al.*, the record of which has been produced in evidence.

You understand, gentlemen, that there was a suit instituted by Levi J. Wagner and others to test the validity of these bonds, with a view of determining whether they were valid or invalid. The result of that suit was in favor of the county, to wit, that the bonds

were void and should be delivered up to be cancelled; but those bonds that were in the hands of *bona fide* holders for value, they knowing nothing about the suit or invalidity of the bonds, would not be concluded thereby; hence, under the rules of law governing negotiable paper of this character, though a party may know of the infirmity of the paper, if he derives title thereto through a person who knows nothing about it, he holds the paper as if valid. In other words, if this were not so, and either of you receives negotiable paper through an innocent party, and that paper is found invalid afterward as between the original parties, you might go back on the innocent party to reimburse you, and thus through the ordinary course of transfers suits might run indefinitely through a series of transactions; but to give sanctity to commercial paper the
588 law is that if one innocent party in the course of the transaction holds the paper for value all behind him stand in his shoes, and are as if equally innocent parties. I have gone a step further than the ruling which was specifically before the supreme court. I say that this paper is valid in the hands of a party who received it for value without actual notice of the pendency of the suit of Wagner and others, but if he and each intermediate party from the first delivery of these bonds and coupons also had notice of such suit or other infirmity then no recovery can be had.

Actual notice that the bonds and warrants were delivered by said Mety for the purpose of avoiding a proceeding in equity for the cancellation of said bonds and coupons, which contemplated proceeding was known to said Mety to be about to be instituted, and which was soon thereafter instituted, the same being the case above mentioned, would, if said actual notice existed as to the plaintiff and each intermediate party, prevent plaintiff's recovery herein.

By that is meant simply this, that if actual notice existed, so far as all the intermediate parties were concerned in the transfer of this paper from one to the other, of the actual pendency of that suit, or of a contrivance by Mety, through this indemnity bond to escape the injunction, the same rule obtained.

If the obligations sued on were duly executed, as above mentioned, and delivered by said Mety, and were thereafter purchased for value by the plaintiff from persons who had acquired the same for value without notice of said suit or of any fraud in the execution and delivery of the same, as above stated, then as to such obligations
589 the plaintiff is entitled to recover.

On the other hand, if the plaintiff and each of the persons through whom he derived title had actual notice of said Wagner suit, or of the delivery of said obligations by Mety to escape said suit, known to be about to be instituted, then as to such of said obligations there can be no recovery.

In other words, in order to defeat the plaintiff's rights in this case, it is necessary to trace from the original delivery by Mety of those bonds through all the various parties in the course of the transfers an actual notice of that pending suit or of the fraud mentioned, and in the light of the testimony it seems that there is no

need of going any further. One link broken in the chain breaks the chain.

Mr. CUNNINGHAM: I desire to be understood as formally repeating the exceptions which I have heretofore made.

The COURT: That is understood. I will only state, in order that the jury may understand this, in a condensed form, that where negotiable paper is put upon the open market and a purchaser knows nothing of its infirmity and pays value for it, although the person from whom he purchases knew there was an infirmity in the paper, yet he is not charged with notice of what others knew, and if that paper passes through the hands of one or more innocent parties, and finally comes back to him, and he doubts the validity or infirmity of the paper, he is protected by the innocent parties who stand behind him. That is all that means. Otherwise, negotiable paper would be set afloat in the community which might be valueless; so that nothing remains for you but to find a verdict for the plaintiff for the sums stated, unless actual notice, as stated, is traced through all the transferees of the paper. This raises
590 a very important question for the Supreme Court of the United States to pass upon in the light of its recent decision in the principal case.

To which charge defendant excepted, because it took from the jury the right to pass upon material issues of fact presented, and especially to that part of said charge which takes from the jury the right to pass upon the question as to whether William Hill, having actual knowledge of the pendency of the suit of Wagner *et al. vs.* Mety *et al.*, would be precluded from recovering in this action.

On the 16th of October, 1885, defendant filed its motion in arrest of judgment and for new trial herein.

Said "motion in arrest of judgment" is in the words and figures following, to wit:

Motion in Arrest of Judgment.

In the Circuit Court of the United States for the Eastern District Missouri. Sept. Term, 1885.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } Nos. 1153 & 1287. Consolidated.

Now comes the defendant, by its counsel, and moves the court to arrest the judgment in this cause rendered, for the reasons:

1st. Upon the record it is manifest that the judgment is erroneous.

2nd. Plaintiff's amended and consolidated petition does not state facts sufficient to constitute a cause of action against this defendant.

591 3rd. The judgment exceeds the amount for which, under any circumstances, plaintiff could recover judgment.

4th. In the judgment herein rendered have been merged coupons

to the amount of several thousand dollars, which were never filed in this cause, but which were filed during the year 1877 in case No. 752, William Hill *vs.* Scotland County; No. 753, James B. Dodge *vs.* Scotland County; No. 754, C. H. Mellen *vs.* Scotland County, and No. 755, Manning *vs.* Scotland County, in which several cases this court, on the 25th of September, 1877, merged said several coupons, designated as sixth maturing coupons, into judgments, recorded in Record Book H, at pages 29 and 30, at which term of the court, expiring on the third Monday in March, 1878, all of said several coupons were duly cancelled upon the face thereof.

HENRY A. CUNNINGHAM,
Att'y for Defendant.

Endorsed: Nos. 1153 & 1287. Wm. Hill *vs.* Scotland County. Defendant's motion in arrest of judgment. Filed Oct. 15, 1885. A. P. Selby, clerk. Henry A. Cunningham & C. H. Krum, att'ys for defendant.

Said motion to set aside the judgment and grant a new trial herein is in the words and figures following, to wit:

Motion to Set Aside Judgment and Grant a New Trial.

In the Circuit Court of the United States for the Eastern District of Missouri. September Term, 1885.

WILLIAM HILL, Plaintiff, *vs.* THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Defendant.	Nos. 1153 & 1287. Consolidated.

592 Now comes the defendant, by its counsel, and moves the court to set aside the verdict of the jury and the judgment herein rendered and to grant a new trial of this cause for the reasons—

1st. The court erred in ordering this case to be tried before the same jury, together with the separate cases of First National Bank against Scotland County and C. H. Mellen *vs.* Scotland County, being cases Nos. 2456 & 2482.

2nd. The court erred in admitting, contrary to defendant's objections, illegal evidence offered by plaintiff upon the trial of this cause.

3rd. The court erred in excluding legal evidence offered by the defendant upon the trial of this cause.

4th. The court erred in charging the jury that it was encumbent upon defendant to show that every preceding holder, in addition to plaintiff, had actual notice of the pendency of the suit of Wagner *et al. vs.* Mety *et al.* in order to make available against plaintiff the evidence admitted, showing or tending to show that said plaintiff, William Hill, and other persons interested in the prosecution of this action had actual notice of the pendency of said suit of Wagner *et*

al. vs. Mety *et. al.*, when said William Hill purchased for himself and others coupons in this suit declared upon.

5th. The court erred upon the trial of this cause in refusing to grant the request of defendant for the seven declarations of law proffered by defendant and now filed in this cause.

6th. The verdict of the jury was contrary to the evidence admitted upon the trial of this cause.

7th. The verdict of the jury was contrary to the law in such case made and provided.

593 HENRY A. CUNNINGHAM,
Att'y for Defendant.

Endorsed: "Nos. 1153 & 1287. Consolidated. Wm. Hill *vs.* Scotland County. Motion of defendant to set aside the judgment and grant a new trial herein. Filed Oct. 15th, 1885. A. P. Selby, clerk. Henry A. Cunningham & C. H. Krum, for defendant."

Which motions were, on the 27th of October, 1885, submitted to the court and respectively overruled; to each of which rulings of the court the defendant at the time then and there excepted. Wherefore defendant prays that this its bill of exceptions be signed and sealed by the judge of this court and made part of the record herein, which is accordingly done.

This the 31 day of Oct'r, 1885.

SAMUEL TREAT. [SEAL.]

Endorsed: "Nos. 1153 & 1287. Consolidated. Wm. Hill *vs.* Scotland County. Defendant's bill of exceptions. Approved. J. H. Overall, att'y for pl'ff."

594 And afterwards, to wit, on the 5th day of November, A. D. 1885, the following further proceedings were had in said cause, to wit:

Writ of Error Allowed, Citation Signed, Bond Approved and Filed.

WILLIAM HILL, Plaintiff,
vs.
SCOTLAND COUNTY, Defendant. } 1153 & 1287.

Now comes the defendant, by attorney, and presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said plaintiff to be and appear at said Supreme Court on the second Monday of October next, the first day of the next term thereof, which said writ of error is allowed and said citation signed by the judge.

And thereupon the plaintiff, by attorney, acknowledges service of said citation.

And the said defendant also presents to the court its bond in the penal sum of five hundred dollars, which bond is approved and ordered to be filed as part of the record herein.

Said bond is in the words and figures following, to wit:

595 Know all men by these presents that we, John Q. Adams, Thomas McAlister, and J. D. Skidmere, are held and firmly bound unto William Hill, the plaintiff in case Nos. 1153 & 1287, consolidated, Wm. Hill *vs.* Scotland County, in the full and just sum of five hundred dollars, to be paid to the said William Hill, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of November, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas, lately at the September term, 1885, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between William Hill, plaintiff, and The County of Scotland, in the State of Missouri, defendant, a judgment was rendered against the said County of Scotland; and the said County of Scotland, in the State of Missouri, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William Hill, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said County of Scotland, in the State of Missouri, shall prosecute said writ of error to effect and answer all damages and costs if it fail to make good its said plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

JOHN Q. ADAMS. [SEAL.]
THOMAS McALLISTER. [SEAL.]
J. D. SKIDMERE. [SEAL.]

Approved by—
SAMUEL TREAT, *Judge.*

[Endorsed:] No. 1153 & 1287. Con. United States circuit court, eastern district of Missouri. William Hill *vs.* Scotland County. Bond. $500.00. —— ——, principal; —— ——, sureties. Filed 5th day of Nov. 1885. A. P. Selby, clerk.

596 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, pleadings, exhibits, and proceedings had in case Nos. 1153 & 1287, consolidated, of William Hill, plaintiff, against Scotland County, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 18th day of December, in the year of our Lord eighteen hundred and eighty-five.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
Clerk of said Court,
By ——·——, *Deputy.*

Endorsed on cover: E. Missouri C. C. U. S. No. 538. The County of Scotland, in the State of Missouri, plaintiff in error, *vs.* William Hill. Filed April 19, 1886.

IN THE SUPREME COURT OF THE UNITED STATES.

OCT. TERM, 1887.

THE COUNTY OF SCOTLAND, IN THE STATE OF MISSOURI, Plaintiff in Error,
vs.
WILLIAM HILL, Defendant in Error.
No. 538.

In the above-entitled cause the bill of exceptions, as same now appears in printed record, at page 344, shows that two depositions of William Hill were read in evidence by counsel for Scotland county, but the contents of said depositions are not set forth in said record. It is, therefore, stipulated and agreed between the respective parties herein that copies of such depositions thus read, viz., that of William Hill taken April 19, 1879, and filed April 22, 1879, and that of William Hill taken February 23d, 1880, and filed Feb'y —, 1880, in said inferior court, if duly certified by the custodian thereof, to wit, the clerk of the circuit court of the United States for the eastern district of Missouri, or his successor, the clerk of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, may be filed with the clerk of the Supreme Court of the United States and printed as part of the bill of exceptions in said cause.

F. T. HUGHES &
JNO. H. ORME,
Attorneys for Defendant in Error.
HENRY A. CUNNINGHAM,
Attorney for Plaintiff in Error.

In the Circuit Court of United States for the Eastern District of Missouri.

WILLIAM HILL, Plaintiff,
against
THE COUNTY OF SCOTLAND OF STATE OF MISSOURI, Def't.

Depositions of witnesses produced, sworn, and examined before me, a notary public, at my office, in the city of Alexandria, county of Clarke, and State of Missouri, on this 19th day of April, A. D. 1879.

William Hill, being by me first sworn to testify the whole truth touching the matter in controversy, testifies as follows:

WILLIAM HILL, of lawful age, sworn, says: I am plaintiff in this cause; live in Warsaw, Hancock county, Illinois; lived there about thirty years. Warsaw, Ill., is on the apposite side of the river

from Alexandria, Clarke county, Missouri, through which town the Missouri, Iowa & Nebraska railway now runs. I have been engaged in the banking business, as president of the First National Bank of Warsaw, Ill., since its organization in 1864. I was a stockholder in the Iowa Railroad Contracting or Construction Company. I was a stockholder in said company at the time of its organization. I was not present when said company was organized, neither did I assist in organizing it. I do not recollect where its principal place of business was, but think it was at Centerville, Iowa, the termination of the road. None of the business of said company was done through our bank, except they drew their drafts on the treasurer of the company in New York and we cashed them. There was no meetings of the board or members of said company held in the rooms of the bank.

Ques. Are you related to Henry Hill? If so, state how.

(Objected to by pl'ff att'y as incompetent and irrelevant and immaterial.)

Ans. I am a brother to Henry Hill.

Ques. Where has Henry Hill resided since 1869?

(Objected to—same reason as above—by pl'ff's att'ys.

Ans. He has resided in Warsaw, Illinois.

Ques. Is he a member of the First National Bank, of which you are president?

(Objected to same as above.)

Ans. He is a director in the bank, and has been ever since its organization, but has never taken any active part in directing the business of the bank. He has been railroading and I have been banking.

Ques. Was Henry Hill a stockholder or director in the Iowa Contracting Company?

(Objected to as incompetent and irrelevant.)

It is agreed by and between the att'ys for both plaintiff and def't present that objections to questions and answers in the taking of these depositions may be raised before the court without objections being noted when questions are asked.—N. T. Cherry, Notary.)

Ans. I think he was.

Ques. What office did he hold in said company?

Ans. I do not know whether he was supt. of it or not. I do not know what office he held in said company. I could not say that he held the principal office. The principal office and stockholders of said company was in New York, and the principal business of said company was done in New York. I could not say whether Henry Hill or Gen. Drake was at the head of the company here, but it was one of the two men. Henry Hill done most of the business with me. My business required my attention all the time; I had the general control and management of the business of the bank. I am not a member of the Missouri, Iowa & Nebraska Railway Company and never have been, and I have never been a stockholder. I own eighteen Scotland

county bonds issued in aid of Missouri, Iowa & Nebraska railroad. I cannot state the numbers; I can state one; it is number four. The coupons sued on in this suit in which I am interested come from these 18 bonds. I do not remember the number of coupons sued on that I am personally interested in nor the number of the bonds, but the amount I am personally interested — is over $4,500 *dollars*, not including interest on coupon. I cannot state of whom I bought each bond, but the most of them have been purchased in the last three years. The most of them have been bought of Gaylord, of St. Louis, Mo., and Tobey & Co., of New York, brokers; from Gaylord & Co. bought 15 to 20 thousand; from Tobey & Co. from 30 to 40 thousand. I do not own all of these bonds now; only own the eighteen referred to. I own a few of the coupons which were not detached from the bonds I own; I think about nine hundred dollars; in fact, I only own one-half of the nine hundred, having sold half of them to Geo. S. Knox, of Warsaw, Ill. I bought those coupons within the last 2 years—I think about a year ago. I think I purchased them from Gaylord, of St. Louis, above referred to; am not certain. I hold the coupons detached from the 18 bonds above named and the other coupons—about 450 dollars—I hold in my own individual right.

Ques. What amount did you pay Gaylord & Co. for these bonds?

Ans. I paid about $500 for each bond.

Ques. What did you pay Toby & Co.?

Ans. I paid them about the same; some few at as low as 45 cts. on the dollar. The coupons went with the bonds. I do not know that I bought any bonds from any body else.

Ques. Has the bank dealt in these bonds?

Ans. It has; they own some now; have not bought or sold any for some time; the bank owns now, I think, 27 bonds, with all coupons attached or detached that belongs to them.

The proportion of the coupons sued on belonging to the bank is from eleven to 12 thousand dollars. The bank purchased the bonds mostly, I think, from Toby & Co., of New York. I do not know who the bonds came from to Tobey & Co. Geo. S. Knox owns, I think, 16 bonds and coupons detached therefrom which are included in this suit, amounting to about 43 hundred, in addition to his half interest above referred to.

C. H. Mellon, I think, owns 14 bonds; he has about the same proportion of coupons sued on, amounting to about $3,300.

Jas. B. Dodge, I think, owns four bonds, and has about the same proportion of coupons sued on, amounting to something like nine to ten hundred dollars.

Thos. B. Hill, of St. Louis, Mo., has four bonds, I think, and has about the same interest with J. B. Dodge.

Henry Hill has, I think, 16 bonds, and is interested in this suit about $4,300.

Zeno, Secor & Co., of New York, Government contractors, I think, own nine bonds; interested in this suit to about $2,500.

Wm. H. Gebhard, of New York, capitalist; I think he has about nine bonds, and is interested in this suit about same as Secor & Co., $2,500.

A. B. Stone, of New York, capitalist, has, I think, 5 bonds, and is interested in this suit about $1,200.

These are all the bonds that I represent that I can now remember.

Not having time to complete the taking of these depositions, the further taking of same was continued, by agreement, till Monday, — 21st, 1879.

MONDAY, *April 21st*, 1879.

Plaintiff appearing in person and by his att'y, F. T. Hughes, and the def'ts by their att'y, Sam. T. Burch, proceeded with the deposition of Wm. Hill.

Q. Have you the numbers of the bonds filed in this suit from which the coupons sued on were detached?

Ans. I have them; they are numbered 4, 10, 11, 12, 38, 78, 79, 80, 88, 90, 92, 135, 136, 137, 160, 161, 162, 166.

The above bonds are my own coupons, amounting to $4,160 of the above bonds in this suit. I own $400 in coupons sued on detached from bonds numbers 53, 55, 128, 129, 130.

George S. Knox owns bonds numbered 6, 25, 26, 27, 29, 30, 35, 36, 37, 44, 45, 46, 71, 163, 167, amounting to 15 coupons, $4,080; these extra coupons detached from other bonds numbered 52, 54, & 55.

First National Bank owns bonds numbered 57, 63, 64, 65, 66, 67, 68, 69, 70, 75, 81, 82, 85, 93, 97, 98, 138, 139, 140, 141, 142, 178, 179, 187, 188, 189, -90; coupons sued on amounting $11,200.

Ques. Can you tell when the bonds sued on were delivered.

Ans. I can't tell. I find the bond I now have, number 4, was dated September 12, 1870, and purports to have been delivered by Charles Mety 20th day of September, 1871.

It is agreed by the attorneys for pl'ff & def't that the whole number of bonds (200) were dated September 12, 1870.

Charles H. Mellon owns bonds numbered 16, 17, 18, 39, 40, 56, 101, 102, 103, 104, 105, 106.

Coupons in suit detached from the bonds amount to $1,440.

Jas. B. Dodge owns bonds numbered 173, 174, 175, 176; coupons in suit amount to $1,920.

Thos. B. Hill owns bonds numbered 32, 33, 34, 153, 154, 155, 156, 157.

Coupons in suit amounting to $1,280.

Henry Hill owns bonds numbered 5, 31, 76, 77, 84, 89, 133, 134, 158, 159, 164, 165, 177.

Coupons in suit amounting — $3,860.

Zeno, Secor & Co., New York, own bonds numbered 7, 8, 9, 99, 191, 192, 193, 194, 195.

Coupons in this suit amounting — $2,880.00.

Wm. H. Gebheard, New York, owns bonds numbered 13, 14, 15, 100, 196, 197, 198, 199, 200.

Coupons sued on amounting — $2,880.

A. B. Stone, New York, owns bonds numbered 2, 3, 145, 146, 147, 186.

Coupons sued on amounting to $1,840.

The coupons belonging to Stone, Gebheard, & Secor were sent to me for collection by them is the reason why I suppose they own them.

I cannot give now the numbers of the bonds purchased of Gaylord & Co., but could by referring to my books at the bank in Warsaw. I have a record thereof in the bank of time purchased and who from. I cannot give a day or date of the purchase of any of them. All the bonds that I have given numbers of, except those owned by Secor, Gebheard, & Stone, I purchased them individually within the last 3 years, as near as I can remember, and they are now in my possession. I can fix the dates of the purchase of them in this way: I bought them all after Judge Dillon's decision in the case of Thomas against Scotland County on coupons of same series of bonds as these and before the decision of the Supreme Court of United States in the same case. I am not certain that I bought all from Toby & Co. & Gaylord & Co.; think I bought some from parties in Cleveland, Ohio, but I do not remember the names. I do not think I bought of any other parties that — now remember. I cannot say what I paid for all the bonds; I bought them with other bonds and usually counted them worth about 50 cts. I do not know the number of the bonds in which coupons are sued on in this suit except the parties given heretofore. I bought them all, but I knew where they were going at the time I bought them.

Ques. At the time of the purchase of the bonds represented in this suit was you aware or did you know that there had been a suit begun in the Scotland county circuit court by L. J. Wagoner and others against The Missouri, Iowa & Nebraska Railway Company, Charles Mety & others to restrain Charles Mety from delivering the bonds to the Missouri, Iowa & Nebraska Railway Company and the said company from receiving the same?

Ans. I did not know of such suit.

Ques. Did not Henry Hill tell you that there was such a suit pending in Shelby county circuit court, taken by change of venue from Scotland county, and taken from the Shelby circuit court to the supreme court of the State of Missouri and was there pending at the time of the purchase of these bonds?

Ans. I have no recollection of his ever saying anything to me about it. My first knowledge of that suit was when I met Mr. Baker at Glenwood, Mo., in the early part of the spring or late in the winter just past or 1879.

Q. I will ask you if you had not made inquiry regarding suits pending about these bonds before you purchased them?

Ans. Nothing further than the case pending in the United States court.

Ques. Did you hear, before you purchased the bonds from which the coupons in this suit are detached, of an application for injunction to Judge Nelson, at chambers, in Monticello, Lewis county, Missouri, to restrain Charles Mety, trustee, of Scotland county, from delivering the Scotland county bonds to the Missouri, Iowa & Nebraska Railway Co.?

Ans. I think I heard of such an application for an injunction

suit; I do not remember who told me. I do not think I talked to the att'ys of the Missouri, Iowa & Nebraska railway about it. My recollection is that the application was refused by the court, and I supposed that was the end of it, and never knew any difference till the conversation with Baker referred to above.

Ques. Have you not talked with Henry Hill frequently about this suit pending?

Ans. I have no recollection of talking to anybody about it; do not recollect how I heard it.

Ques. State whether or not you did not hear in connection that a suit was filed by injunction in the circuit court of Scotland — about the same time by the same time for the purpose of restraining Mety, trustee, from delivering the bonds.

Ans. I have no recollection of hearing of that case.

Ques. Did you know or had you heard from any person or otherwise before the purchase of these bonds, from which the coupons are detached, in controversy in this suit, that on the 11th day of Septemb r, 1871, that Levi J. Wagoner and other citizens and tax-payers of Scotland Co., Missouri, as plaintiffs, instituted a suit or proceeding in the circuit court of Scotland county, Missouri, against Chas. Mety, in whose hands the bonds and coupons had been placed; William Dawson, David B. Cooper, and James E. Marquis, justices of the county court of said Scotland county; James S. Fullerton, and the Missouri, Iowa & Nebraska Railway Company, as defendants; the object of said suit or proceeding was to enjoin and restrain said Charles Mety from delivering said bonds and coupons to said Missouri, Iowa & Nebraska Railway Company, to prevent the sale and delivery of said bonds to outside parties, to have said bonds declared null and void, and to have the same delivered into court and canceled and destroyed?

Ans. I will say that at the time I bought these bonds I did not know of such a suit. If I had ever heard of it I had forgotten it. I do not now recollect that I had ever heard of the suit referred to until I was told by Mr. Baker, as before stated. I never heard of such a suit pending in the Shelby county circuit court. I never heard of such a case pending in the supreme court of the State until I heard it from Baker, as before stated. I do not remember whether I was present in the bank at the time the first hundred thousand dollars of Scotland county bonds was delivered to the railway company by Chas. Mety. I have no recollection of it. I saw Chas. Mety over in Warsaw about the time, I suppose, these bonds were delivered. I do not know that any one ever told me what his business was at that time. I do not remember of Henry Hill ever telling me anything about Mety's business at Warsaw at that time. I know Mety stayed there one night. I do not think he stayed a week. I do not remember who told me. I presume I knew — he was there for at the time. I do not know who told me or whether I was told by anybody. I do not know as a fact that the bonds were delivered by Mety in the bank or that they ever were in the bank on or about that time. If that was a fact and the bonds were in the bank I presume I knew it at that time.

Ques. Did you know or did you not know that Mr. Mety was in Warsaw at that time or about the 21st day of September, 1871, to avoid the service of an injunction or other suit to restrain him from turning over the Scotland county bonds to the Missouri, Iowa & Nebraska Railway Company?

Ans. I do not know that he was there for that purpose. I do not know now and I do not know that I knew then.

Ques. State in what capacity has Henry Hill been acting in the Missouri, Iowa & Nebraska railway since it was constructed to Memphis.

Ans. He has been acting as sup't since the construction of the road to Memphis in Sept. 21st, 1871, I think. The road was operated by the construction Co. for a time. My impression is that he has been sup't of the business of the road most of the time and has lived in Warsaw, but is now living in Keokuk, Iowa. I have been on familiar terms with Henry Hill all the time. I do not think I have been in Memphis, Missouri, not exceeding a half dozen times since 1871. James Fitshenry has been treasurer of the road and has lived until recently at Alexandria, Mo., and Warsaw, Ill. I have known him. John Nolker lives in Warsaw, Ill.; is a member of the company; am well acquainted with him. Geo. S. Knox lives in Warsaw, was a member of the company two or three years ago, and may be a member yet, but I do not think he is. I do not think C. H. Mellem, the First National Bank, Gebheard, Stone, are now or ever have been members of the railway Co.

Cross-examined:

Ques. Did you buy these bonds in good faith before their maturity, believing you were getting a good title to them and that they were legal and valid obligations of Scotland county, without any knowledge or information upon your part that any suit was then pending in any State court of Missouri to cancel said bonds or enjoin their delivery, or to otherwise declare them illegal and void?

Ans. I did. I purchased them for cash in the market, paying for them their market value at the time and in the ordinary course of business.

WM. HILL.

Subscribed and sworn to before me this 21st day of April, 1879.

[SEAL.] N. T. CHERRY,
Notary Public.

STATE OF MISSOURI, } ss:
County of Clarke, }

I, N. T. Cherry, a notary public within and for the county aforesaid, duly commissioned, do certify that, in pursuance of an agreement by the att'ys of both plaintiff and defendant, came before me, at my office, in town of Alexandria, in the county & State aforesaid, William Hill, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing and sub-

scribed by him in my presence on the 21st day of April, 1879, and his deposition is herewith returned.

And I hereby certify that William Hill is a resident of the county of Hancock and State of Illinois.

Given at Alexandria, in the county of Clarke & State of Missouri, this — day of April, A. D. 1879.

[SEAL.] N. T. CHERRY,
Notary Public.

Commissioned for a term ending March 12th, 1882.

UNITED STATES OF AMERICA, }
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true copy of deposition of William Hill, taken April 19, 1879, and filed April 22, 1879, in my office, in case No-. 1153 & 1287, of William Hill, plaintiff, against Scotland County, defendant, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 10th day of December, in the year of our Lord eighteen hundred and eighty-seven.

{ Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. }

A. P. SELBY,
Clerk of said Court.

[Endorsed:] No-. 1153 & 1287. United States circuit court, eastern division of the eastern judicial district of Missouri. William Hill against Scotland County. Duly certified copy of deposition of William Hill in the above-entitled cause.

In the Circuit Court of the U. S. for the Eastern District of Missouri, at St. Louis.

WM. HILL }
vs } 1287.
SCOTLAND CO. }

It is agreed that the deposition of Wm. Hill & Jas. B. Dodge may be taken before Geo. F. Hilton, notary public, at the office of Hagerman, McCrary & Hagerman, in the city of Keokuk, Iowa, to commence Feb. 23 & continue till ended, and be used on the trial of the above case as if notice had been regularly served as provided by law.

H. A. CUNNINGHAM.
HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Defendant.
A. J. BAKER AND F. T. HUGHES,
Att'ys for Plaintiff.

UNITED STATES OF AMERICA, }
District of Iowa, State of Iowa, Lee Co., } ss:

Be it remembered that on this 23rd day of Feb., A. D. 1880, I, Geo. F. Hilton, notary public in and for said county, did call and cause to be and personally appear before me, at my office, at the office of Hagerman, McCrary & Hagerman, in the city of Keokuk, Iowa, in the said district as aforesaid, in the State as aforesaid and county as aforesaid, to testify and the truth to say on the part and behalf of the defendant in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the eastern district of Missouri, at St. Louis, wherein Wm. Hill is plaintiff — the County of Scotland, Mo., is defendant.

And the said Wm. Hill, being about the age of 40 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth of the matter of controversy aforesaid, I did carefully examine the said Wm. Hill, and he did thereupon depose, testify, and say as follows, viz:

Inter. 1. You are the plaintiff in this case?

Ans. Yes, sir.

Inter. 2. Where are the coupons sued on in this case?

Ans. I don't know; I suppose they are filed in court. I delivered them to the attorneys, is all I know about it.

Inter. 3. How many of the coupons sued on do you now own?

Ans. Well, I couldn't tell that without memorandums.

Inter. 4. Do you now own of the coupons sued on only the coupons described in your former testimony in this case as belonging to you?

Ans. I think I own just the same now as then.

Inter. 5. Is the ownership of the other coupons sued on the same now as described in your former deposition?

Ans. I couldn't say whether they are or not.

Inter. 6. Are they, so far as you know?

Ans. The only change I know of is one party is dead—Mr. Knox.

Inter. 7. Are you now a member of the Iowa R. R. Contracting Company?

Ans. No.

Inter. 8. When did you cease to be a member?

Ans. Well, I never really was a member. I never had any stock in my own name.

Inter. 9. In whose name was your stock?

Ans. All the stock I ever had was in Henry Hill's name.

Inter. 10. Isn't that stock still in Henry Hill's name for your use?

Ans. No; I think not. It was traded off.

Inter. 11. When was it traded off?

Ans. Well, I don't remember for certain; it was 3, 4, or 5 years ago.

Inter. 12. Were you a member of the firm of Hill, Knox & Co.?

Ans. Yes, sir.

Inter. 13. Who composed that firm?

Ans. Jno. W. Knox, Henry Hill, Geo. S. Knox, Wm. Hill, Jas. B. Hill, & John Hill. Thos. Hill wasn't known in the firm, but he was interested in the interest that Jas. Hill and I had in the firm.

Inter. 14. Are you not a stockholder in the Missouri, Iowa & Nebraska Railway Company?

Ans. No.

Inter. 15. Is not Hill, Knox & Co. a stockholder in that company?

Ans. No; not that I know of. Hill, Knox & Co. dissolved partnership before this railroad enterprise was begun. Hill, Knox & Co. were dissolved and the assets divided in the summer of 1870. I think that was before the railroad was started.

Inter. 16. Don't you know that certificates of stock were issued by the railroad company to Hill, Knox & Co.?

Ans. No; I do not.

Inter. 17. Is not Henry Hill a stockholder in the Missouri, Iowa & Nebraska R. W.?

Ans. Not to my knowledge. I should think likely he was, though.

Inter. 18. Isn't he a stockholder in the Iowa R. R. Contracting Company?

Ans. I do not know that he is.

Inter. 19. Isn't it your understanding that he is now and has been a stockholder in both the said construction Co. and the said R. W. company ever since about the 1st of May, 1870, that being the time when the Alexandria & Bloomfield R. R. Co. and the Iowa Southern Railway Co. consolidated under the name of the Missouri, Iowa & Nebraska R. W. Co.?

Ans. My understanding is he is a stockholder in the M., I. & N. R. W. Co. I should think so from the position he holds, being a director. The other company I don't know anything about the condition that it is in.

Inter. 20. During what time did your bank at Warsaw do the banking business of the said railway company and the said construction company?

Ans. I don't remember definitely. I think it was about the summer of 1871.

Inter. 21. Didn't your bank do their business before and after that time?

Ans. Commencing some time in the summer of 1871 and continuing on for some years after. At first the business of the bank was with the construction company. The railway company had no business with the bank for some years after; I can't tell how long.

Inter. 22. Who were the treasurers, respectively, of the contracting Co. and the railway company?

Ans. James Fitzhenry was treasurer of the r'way Co., & I don't know if he or McCandless, of N. Y., was treas. of the contracting Co.

Inter. 23. Will not the books of the bank you represent show the business dealings between your bank and the said company?

Ans. No; they will not.

Inter. 24. Will they not show some of such dealings?

Ans. Yes, sir.

Inter. 25. But not all of such dealings?

Ans. That is, it won't show what was contracting Co. and what was the railway Co.

Inter. 26. What books are kept in your bank at Warsaw?

Ans. There are a good many books kept—more than I can enumerate, probably. The principal books are what we call "cash book," "journal," "general ledger," "deposit book," "check book," and "deposit ledger." That's the principal books.

Inter. 27. Do not the books of the bank show its transactions with the railway and contracting Co. during the year 1871?

Ans. It will show the transactions of the contracting Co., but don't think the R. R. Co. had any business with the bank in 1871.

Inter. 29. Under what name will the transactions of the contracting Co. with your bank be shown?

Ans. I am not right sure about that. It might be in the name of Fitzhenry, treas., or Henry Hill, sup't, or it might be in the Iowa Railway Contracting Co.

Inter. 30. Which company was it that deposited with your bank the county bonds received from Scotland Co. and issued by the county?

Ans. I have no knowledge of having received them from either one of them on deposit.

Inter. 31. Who was it, then, that left such bonds with your bank?

Ans. I have no knowledge of having ever received any bonds from anybody. Of course, I mean the Scotland Co. bonds.

Inter. 32. Do you swear that such bonds were never left in your bank?

Ans. I don't swear that they were never left there, but that, to my knowledge, I never saw any there. Packages are sometimes left there without our knowing what they are.

Inter. 33. Haven't you heard that such bonds were left in your bank?

Ans. If they were ever left there I presume that I would have heard of it, but don't remember of having heard of it until since this suit was begun and these depositions were taken. I mean more particularly the deposition of mine taken a year ago, or about.

Inter. 34. Haven't you ever heard that they were left there from persons connected with your bank?

Ans. I have no recollection of ever hearing of it in that way.

Inter. 35. Have you never heard that they were left there from persons connected with the said R. W. Co. or the said contracting Co.?

Ans. I have no recollection of hearing of it from either of those sources.

Inter. 36. To whom did Chas. Mety deliver the Scotland Co. bonds?

Ans. I do not know.

Inter. 37. What is your impression as to that?

Ans. My impression would be that he delivered them to Gen. Drake, Henry, or Hughes.

Inter. 38. Have you ever heard to whom he delivered them?

Ans. I don't remember of ever hearing to whom he delivered them.

Inter. 38½. If you had heard it would you probably have forgotten it?

Ans. If I had heard it at the time, being so long ago, it is not improbable that I would have forgotten it.

Inter. 39. Did Mety deliver the bonds to the R. W. Co. or the construction Co.?

Ans. I do not know.

Inter. 40. What is your information as to that?

Ans. I haven't got any information about it.

Inter. 41. What is your impression about it?

Ans. My impression is that he delivered them to the railw. Co.

Inter. 42. Were all the Scotland Co. bonds delivered to the railway Co. at once, or were they delivered in installments?

Ans. My opinion is they were delivered in installments.

Inter. 43. In how many installments?

Ans. My impression would be that there was two.

Inter. 43½. What amount at each installment?

Ans. My impression would be that there were 100 bonds in each installment.

Inter. 44. When was the first installment delivered?

Ans. I don't remember when it was.

Inter. 45. About when?

Ans. I should think about Sept., 1871.

Inter. 46. When was the second installment delivered?

Ans. I don't know when that was.

Inter. 47. About when?

Ans. All I can say is that I understood that they were to be delivered when the road got to the west line of Scotland Co. I don't — anything about it but by hearsay.

Inter. 48. When did you first read the contract or subscription between Scotland county and the R. W. under which the bonds were issued?

Ans. I don't think I ever read it; if I did I don't remember it.

Inter. 49. When did you first hear of the term of said subscription?

Ans. I haven't the least idea when I heard it.

Inter. 50. You heard of the terms of the subscription before the bonds were issued, did you not?

Ans. I presume likely I did, but don't remember of it.

Inter. 51. Do you remember when the R. R. was completed to Memphis, Scotland Co., Mo.?

Ans. I remember the circumstance. We were all invited out to a big dinner; I think I went out.

Inter. 52. You heard before the bonds were issued of the injunction suit which was prosecuted to Judge Wilson at the Lewis Co. circuit court, did you not?

Ans. I can't tell whether I heard it before the bonds were issued or not. I heard some time that there was an application for an injunction had been refused.

Inter. 53. You heard it about the time of the application, did you not?

Ans. I think it's likely I did.

Inter. 54. You also heard of the application for an injunction before Judge Wilson, of the Scotland Co. circuit court, did you not?

Ans. I don't know that I did. I simply heard that there was an application for an injunction. I don't know whether it was the Lewis Co. court or the Scotland Co. court, and I heard also that the injunction had been refused.

Inter. 55. You heard this about the time of the application, did you not?

Ans. I don't know when I heard it.

Inter. 56. Isn't it your impression that you heard it about the time of the application for an injunction?

Ans. Well, I don't know; it might have been at the time and might have been a year afterwards, for all I know.

Inter. 57. Were you not largely interested in the contracting Co. at that time?

Ans. No, sir; not largely interested.

Inter. 58. What was your interest in the contracting company at that time?

Ans. I believe it was about $2,000.

Inter. 59. What was your brother Henry Hill's interest in it at that time?

Ans. I don't know.

Inter. 60. About what?

Ans. I don't know what it was.

Inter. 61. What is your impression as to about what it was?

Ans. Well, I don't know that I have any impression as to his interest.

Inter. 62. Wasn't he largely interested in it?

Ans. I don't think that he was very largely interested in it.

Inter. 63. Wasn't he largely interested at that time in the railroad Co.?

Ans. I have no knowledge of his interest in the R. W. Co. at that time.

Inter. 64. Was the construction company entitled to these Scotland Co. bonds under its contract with the R. W. Co.?

Ans. I do not know; I never had anything personally to do with either the R. W. Co. or the contracting Co.

Inter. 65. Haven't you seen the contract between the R. W. Co. and the contracting Co.?

Ans. I don't remember ever of seeing it.

Inter. 66. Don't you know what it contained?

Ans. I do not.

Inter. 67. What is your impression as to whether that contract gave bonds issued as subsidies to the R. W. Co. to the construction Co.?

Ans. I haven't got any impression; I don't remember ever of seeing the contract.

Inter. 68. When Mety came down to deliver the first installment of bonds where were you?

Ans. I don't know where I was.

Inter. 69. Were you not in Warsaw?

Ans. I can't say now whether I was or not.

Inter. 70. Will you swear you were not in Warsaw?

A. I will swear that I don't know whether I was or not.

Inter. 71. You talked about the indemnity bond that was given to him, didn't you?

Ans. Not that I know of.

Inter. 72. Will you swear that you did not?

Ans. I will swear that I have no recollection about an indemnity bond or seeing an indemnity bond.

Inter. 73. You heard of an indemnity bond, did you not?

Ans. I have no recollection of hearing of such a thing until these depositions commenced.

Inter. 74. Will you swear that you never heard of it at or about the time it was given?

Ans. I have no recollection of it.

Inter. 75. Who signed the indemnity bond?

A. I do not know.

Inter. 76. Haven't you heard who signed it?

Ans. I don't know that I have.

Int. 77. Do you have an impression as to who signed it?

Ans. I can't say that I do.

Inter. 78. Who, in your opinion, signed it?

Ans. I haven't got an opinion on it. The whole thing is new to me. I don't know that there is such a thing.

Inter. 79. Was an indemnity bond given when the second installment of bonds was given?

Ans. I don't know that any bond was given at any time.

Inter. 80. Are not every one of the owners of the coupons sued on in this case connected with either the said R. W. Co. or the said contracting Co.?

Ans. No; they are not.

Inter. 81. Who of them are not?

Ans. I know one that's not; that is Dodge, who never had any interest — any one of them. The 1st National Bank has some in there; they had no interest in the construction Co. or R. W. Co.

Inter. 82. Were not all these parties except those named connected with the R. W. Co. or the Contracting Co. at the time these bonds were delivered by Mety?

Ans. I don't know.

Inter. 83. After Mety delivered those bonds to the R. W. Co. what did that company do with them?

A. I don't know what they did with them.

Inter. 84. Haven't you been told what they did with them by somebody connected with the R. W. Co. or the contracting Co.?

Ans. I don't know that I have.

Inter. 85. Try and remember if you have not.

Ans. I don't know how long you expect to give a man to try. I have no doubt that the Co. sold them, though.

Inter. 86. To whom did the company sell them?

Ans. Well, I couldn't tell you that.

Inter. 87. When did the company sell them?

Ans. I don't know, but I presume they sold them soon after they got them.

Inter. 88. Where did they sell them?

Ans. I don't know, but I think they sold them in New York.

Inter. 89. For what price did they sell them?

Ans. I don't know what price.

Inter. 90. Haven't you heard to whom they sold them, for what they sold them, and where they sold them?

Ans. I don't remember whether I have heard it or not.

Inter. 91. Isn't it probable that you heard it?

Ans. It's possible I heard it.

Inter. 92. Did the company ever offer to sell them to you or your bank?

Ans. I don't remember of them ever being offered and don't think they ever did.

Inter. 93. Did you buy the bonds and coupons in suit owned by yourself, Dodge, and the 1st National Bank of Warsaw?

A. I think I did.

Inter. 94. Did you buy them by correspondence or personal negotiation?

Ans. I think they were bought by correspondence.

Inter. 95. Will you produce all the letters received by you in such correspondence?

Ans. I don't think I could.

Inter. 96. Can you produce any of the letters received by you in such correspondence?

Ans. I think I could.

Inter. 97. Will you do so? Produce all that you can and hand them to the notary to copy.

A. I will take advice in reference to that.

Inter. 98. Did you keep copies of all letters sent by you in that correspondence?

Ans. I can't say that I did. A great deal of that correspondence is by telegraph and telegrams. We don't either keep the ones we receive or the ones we send away.

Inter. 99. Did you keep copies of some of the letters you wrote in that correspondence?

Ans. I think I did.

Inter. 100. Can you produce such copies to be copied by the notary and will you?

Ans. I will if the notary will go to the bank and copy them off of the books.

Inter. 101. But you will not without he does that?

A. I can't well do it.

Inter. 102. How many different purchases did you make of these bonds?

Ans. Well, I don't remember now. Quite a number of them. I should say from 10 to 20.

Inter. 103. On all these bonds purchased by you for yourself, Dodge, and the 1st National Bank were there not at the time of the purchase over due coupons attached to the bonds?

Ans. Yes.

Inter. 104. You, then, knew when you purchased these bonds that the county of Scotland was not paying interest on them, but was contesting her liability on them, did you not?

Ans. I knew the county wasn't paying her interest and I understood there was a suit pending which was carried up to the Supreme Court. I understood that the lower court had decided that the bonds were good and there was an appeal by the county from the decision. I will say now that on the strength of the decision by the lower court was what I based my judgment on in buying the bonds.

Inter. 105. Who owned the bonds that you bought before you purchased?

Ans. I dont know who owned them. I bought them all from brokers. They were very careful not to let me know who owned them.

Inter. 106. What newspapers did you read in 1871, at or about the time of the delivery of the first and second installments of the Scotland Co. bonds and at and about the time of the applications for injunctions in Lewis and Scotland Cos.?

Ans. I don't know anything about applications, but I presume the principal newspaper at that time was the Chicago Tribune.

Inter. 107. You, then, didn't read the Warsaw newspapers?

Ans. I don't know whether I did or not. I presume I read it some. I subscribe for it.

Inter. 108. Did you read the Scotland Co., Mo., papers at that time or the Keokuk, Iowa, daily papers?

Ans. I have no recollection of reading the Scotland Co. papers. I don't subscribe for any Scotland Co. paper. The Keokuk Daily Gate City I subscribe for. Sometimes I read it and sometimes I don't.

Inter. 109. What papers did you subscribe for at that time—1871?

Ans. As near as I can remember, we subscribed for the Chicago Tribune, the Daily Gate City, and the Carthage Gazette on the part of the bank; then I subscribed for my family for the Warsaw Bulletin.

Inter. 110. Don't you know that the Keokuk Gate City and the Warsaw Bulletin contained notices of the proceedings in the Scotland Co. circuit court by the tax-payers of that Co. against the M., I. & N. R. W. Co. to enjoin the delivery of the bonds of Scotland Co. and to annul the subscription of that county to said R. W. Co.?

Ans. I don't.

Inter. 111. When did you purchase the bonds from which the coupons are taken on which this suit is brought?

Ans. I don't remember, but I think the most of them were purchased in 1876; probably some of them in 1875 or 1877.

Inter. 112. None were purchased earlier than 1875, were they?

Ans. I think not.

Inter. 113. What were the prices paid by you for the bonds that were purchased?

Ans. I couldn't tell what the prices were; there were various prices. I generally tried to buy them cheap as I could.

Inter. 114. What was the highest price and what was the lowest price paid for any of the bonds?

Ans. I couldn't answer that.

Inter. 115. About what was the average price?

Ans. Somewhere in the neighborhood of fifty cents, I should judge.

Inter. 116. Was that fifty cents of the principal of the bonds?

Ans. Yes, sir.

Inter. 117. How many coupons were attached when you purchased?

Ans. They varied; some had coupons for 1872, 1873, & 1874; I mean beginning in 1872, 1873, & 1874.

Inter. 118. Who was the chief manager of the railway Co. and the contracting Co. during the year 1871?

Ans. As far as I know, in the West here, Henry Hill & Gen. F. M. Drake.

Inter. 119. You and Henry Hill were brothers and lived in the same town, were stockholders in the same bank, and mutually interested during that year in this railroad enterprise, were you not?

Ans. Well, now, I had no interest in this railroad and never had. I supposed I had some interest in the contracting Co. We were brothers, stockholders in the same bank, and lived in the same town.

Inter 120. And you frequently talked over your business interests and specially the progress and condition of this railroad enterprise, did you not?

Ans. I don't remember of frequent conversations about the railroad enterprise.

Inter. 121. Didn't you keep posted about the railroad enterprise from time to time?

Ans. Well, I don't know that I did. My interest in the railroad was small and I didn't pay much attention to the railroad business. I had other business to look after.

Inter. 122. Didn't you know that the railroad would be benefited by getting bonds as subsidies from the counties through which it run?

Ans. I presume I thought so.

Inter. 123. Yet you took no interest in watching any controversies between the railroad and the counties over subsidies claimed by the R. W. Co.?

Ans. I took no special interest.

Cross-examination by A. J. BAKER on behalf of pl'ff:

Inter. 1. Henry Hill is interested in some of the coupons in this suit, is he not?

Ans. Yes.

Inter. 2. Did you negotiate the purchase of the bonds that Henry Hill owns and from which the coupons in suit belonging to him were detached?

Ans. Yes.

Inter. 3. Did you negotiate the purchase of the bonds belonging, respectively, to Jas. B. Dodge, the 1st Nat. Bank of Warsaw, Ill., and Geo. S. Knox, and from which the coupons belonging respectively to them and now in suit in this case were detached?

Ans. Yes.

Inter. 4. You stated in your examination-in-chief that you purchased your bonds after you had been informed that the lower court had decided that the said bonds were valid obligations of Scotland Co. I will ask you to state if the same is true as regards your purchasing the bonds of the other parties above named.

Ans. Yes.

Inter. 5. Were those other parties cognizant of the same facts with reference to the decision of the lower court that you were at and before the time you made the purchase for them?

Ans. I think they were.

Inter. 6. Did you negotiate those purchases at the request of the parties above named?

Ans. I think generally I did; possibly sometimes I didn't consult them.

Inter. 7. Who was the party plaintiff in the suit against Scotland county, if you know, wherein you had been informed of what the lower court had decided?

Ans. I think it was J. T. Thomas.

Inter. 8. Was it the suit of J. T. Thomas against Scotland Co., decided by the United States circuit court for the eastern district of Missouri and afterwards affirmed by the Supreme Court of the United States, to which you have reference?

Ans. Yes.

Re-examination by Mr. HAGERMAN for def't:

Inter. 1. Who was said J. T. Thomas and where does he live?

Ans. I am not personally acquainted with him, but I understand that he lives in Phila., Penn.

Inter. 2. What connection has he now or has he had in the past with the said R. W. Co. or the said contracting Co.?

Ans. I don't know.

Inter. 3. Have you ever heard anything on that subject?

Ans. I have heard that he was interested in the Iowa Contracting Co. at one time.

Inter. 4. From whom did you hear about the result in that case?

Ans. I think I saw it in the papers first.

Inter. 5. Who told you about the result afterwards?

Ans. I don't remember, but I am inclined to think it was Mr. Hughes or Mr. Baker, my attorneys in this case.

Inter. 6. Were they not the attorneys of Thomas in that suit?

Ans. I think they were.

Inter. 7. Are they not the regular attorneys of the M., I. & N. R. W. Co.?

Ans. I don't know, but it's my impression they are.

WM. HILL.

Subscribed and sworn to before — this 23 day of Feb., A. D. 1880.

[SEAL.] GEO. F. HILTON,
Notary Public.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true copy of deposition of William Hill, taken February 23, 1880, and filed in my office March 5, 1880, in cases Nos. 1153 & 1287, of William Hill, plaintiff, against Scotland County, defendant, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this tenth day of December, in the year of our Lord eighteen hundred and eighty-seven.

{ Seal of the United States Circuit Court, Missouri, Eastern Division of the Eastern Judicial District. }

A. P. SELBY,
Clerk of said Court,
By —— ——, *Deputy.*

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern division of the eastern judicial district of Missouri. William Hill against Scotland County. Duly certified copy of deposition of Wm. Hill in the above-entitled cause.

[Endorsed:] Supreme Court U. S. 1887. October term. No. 538. The County of Scotland, pl'ff in error, *vs.* William Hill. Stipulation of counsel & addition to record. Filed Dec. 19, 1887.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE COUNTY OF SCOTLAND IN THE STATE OF MISSOURI,
Plaintiff in Error,
vs.
WILLIAM HILL.
No. 255.

Statement, Assignment of Errors, Points, and Authorities.

HENRY A. CUNNINGHAM,
Attorney for Plaintiff in Error.

GIBSON BROS., Printers, Washington.

IN THE

Supreme Court of the United States.

October Term, 1888.

THE COUNTY OF SCOTLAND IN THE STATE OF MISSOURI,
PLAINTIFF IN ERROR,
v.
WILLIAM HILL.

No. 255.

STATEMENT.

The bill of exceptions herein is somewhat defective and unnecessarily voluminous owing to the fact that it is a type-written interpretation of the Deputy Clerk's stenographic report of the entire trial, which defendant in the court below was compelled to use as its bill of exceptions, owing to the inability of the parties to agree at once upon one of ordinary dimensions tendered by Scotland county, and the unexpected announcement of the lower court's intention to adjourn for the term on the following morning.

This transcript was sent here too long before the adoption of amendment to Rule 10, October Term, 1886, to enable us to apply its provisions, and we refer to the matter merely for the purpose of asking the Court's indulgence for the prolix statement and greatly increased number of assignments of error deemed essential under the circumstances.

The amended petition in this case, filed in 1879, is a copy of those which preceded it (printed Record this case, No. 32, October term, 1884, U. S. Supreme Court, pages 2 and 114), excepting that it was divided into two counts, the first count declaring upon one coupon, the second count declaring upon 555 coupons, of which, at the close of the trial, 311 purported to remain undismissed. No objection is made as to the

division and the including of many coupons in the second count, the the same having been done with the consent of counsel who preceded me in this case, but it was contended in the lower court nine years ago, as it will be here, that neither of the counts of said amended petition stated facts sufficient to constitute a cause of action against defendant. Each of said counts, excepting as to number of coupons, was in the same language, declaring that "plaintiff is the holder and owner of coupons herewith filed detached from bonds numbered (numbers given) for one thousand dollars each, that said bonds were issued by said County of Scotland and delivered to the Missouri, Iowa and Nebraska Railroad Company, a corporation existing under the laws of the States of Missouri and Iowa, in payment for shares of stock which said Scotland County had subscribed to said railway corporation under authority of law."

"That each of said coupons is for the sum of eighty dollars, (giving date) due (giving date.)" The said petition nowhere states that either of said coupons was made by Scotland county, or signed by any officer or agent thereof, or that the same was for interest upon either of the bonds whose numbers are set forth, or that the same was described or recited in said bonds. Nowhere in said petition is it averred that Scotland county is a county *in or through which any part of the route of the* Missouri, Iowa and Nebraska Railway, or any other railway, lies or may be.

Nowhere is it stated that the County Court of Scotland county made any subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, or any other company, or that said County Court or any authorized agent or officer of Scotland County executed either of said bonds, or that anybody executed either of said coupons, or that either of said instruments was sealed with the seal of the County Court of Scotland County, or any other seal.

It did not set out in either of said counts the form of the alleged bonds from which coupons were alleged to have been detached. Under the laws of Missouri, as will be shown by proper citation in argument, there has never been inherent power in counties to make any contract. The County, a *quasi* corporation, has no unlimited representative. The County Court, a tribunal comprised of three members (a majority of whom in 1870 or 1871 were required to unite in any valid action), was authorized by various statutes to perform certain duties concerning county business. Their power was derived from such laws only.

It may as well be stated out of order here that on the trial it was disclosed that plaintiff relied upon Section 10 of charter power of the Alexandria and Bloomfield Railroad Company (page 65 of printed Record), which imported the privileges and *restrictions* of the North Missouri charter of March 3, 1851, by the 14th section of which, set forth at page 69 of printed Record, it was provided that "it shall be lawful for the County Court of *any County in which any part of the route of said railroad may be* to subscribe to the stock of said Company and issue the bonds of *such County* to raise funds to pay the stock subscribed." This Court has long since settled the law that such a power, properly pleaded and proven, permitted the County Court of counties in or through which any part of the route of such railways may be, to

subscribe stock and issue bonds without the condition precedent of an election and authorization of qualified voters as was required by General Railroad Law of the State. But it will be contended, in analyzing the evidence to which exceptions were taken, that plaintiff failed to establish the essential fact that the Missouri, Iowa and Nebraska Railway Company was the lawful successor of the charter power of the Alexandria and Bloomfield Railroad Company. It will hereafter be shown that in the case of Thomas *v.* Scotland County, 94 U. S., 682, (which plaintiff invoked as an estoppel in his reply to 15th defense to second count of his amended petition, but which he did not attempt to establish on the trial), all these essential allegations were fully pleaded in plaintiff's petition and admitted in that *agreed case.*

Defendant's amended answer, which was filed after it obtained a reversal of this case upon its previous hearing in this Court (112 U. S., 183), made distinct and different answers to the respective counts of plaintiff's amended petition (only the plea of *non est factum* was common to both). One averment of the said answer to the first count, which was not denied by reply, may be mentioned, viz: The allegation that after the subscription of stock, but before the delivery of bonds to the Missouri, Iowa and Nebraska Railway Company, said company executed and delivered to a trustee, in said mortgage named, a mortgage to secure negotiable bonds to the amount of six millions of dollars upon all the stock, property and franchises present or prospective of said railroad company, and that the immediate effect of said mortgage was to render the said stock of said railroad company utterly worthless; plaintiff merely denied notice of said fact but demanded no proof. Inasmuch as only one coupon (afterwards merged in judgment) was declared upon in this first count of plaintiff's amended petition, I deem it unnecessary to analyze further the answer to said count, but will proceed to the answer to the second count of plaintiff's amended petition which declared upon 556 coupons, of which 311 remained undismissed at close of trial and were merged in the judgment. All the 97 8th maturing coupons were dismissed before the reversal of this case, as shown by printed Record No. 32, October term, 1884, page 186, Scotland County *v.* Hill.

To said second count defendant made a number of special defenses, among which, in addition to the plea of *non est factum*, were seven separate defenses alleging that many coupons therein designated were in 1877 merged in judgment in other suits (named in said answer), wherein said coupons remained filed and cancelled. Before and during the trial (pages 18, 24, 63, printed Record) plaintiff dismissed his suit as to all of said coupons specified in 10th, 11th, and 12th defenses to said second count (pages 12 and 13, printed Record), but was sustained by the lower court against defendant's exceptions in ultimately computing in his judgment 37 of said coupons described in the 6th, 7th, 8th, and 9th defenses. (Pages 11 and 12 of printed Record.) The 14th defense to said second count of plaintiff's amended petition described twenty-two other coupons concerning which a separate parallel suit, in the name of the First National Bank, was then pending. As to seventeen of these coupons plaintiff dismissed after the filing of said answer (page 18, printed Record), but will be shown notwith-

standing to have computed in his judgment coupons thus dismissed. (Pages 164 to 167, printed Record.)

The 13th count of said answer pleaded that an act amendatory of an act (p. 70, printed Record) entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, &c., authorizing said company to adopt all or any of the sections of said act, never became a law, and that said act was moreover repugnant to sections of the constitution of Missouri prohibiting the amendment, renewal, or re-enactment of laws in such manner. This act is made the subject of two assignments of error.

The 15th defense to second count of plaintiff's amended petition (pages 14–17, printed Record), which pleaded actual notice of its allegations to plaintiff and his co-conspirators, was substantially established by the testimony, with the exception of actual notice of suit to two or three persons from whom plaintiff bought some of the coupons sued on or for whom he sued. So many of the assignments of error are involved in this defense that I beg indulgence for a full statement of its averments. It alleged that August 9, 1870, Dawson and Forgner, claiming to be Justices of the County Court of Scotland county, Missouri, caused to be made upon the records of said court, a court of record then and at all times since composed of three members (a majority of whom, under the laws of Missouri, must unite in making bonds or delegate authority so to do), an offer that if certain conditions precedent therein set forth (ultimately adjudged to have been an unlawful change of route) were complied with, the County of Scotland would subscribe two hundred thousand dollars in bonds of said county to the capital stock of said company, and appointing Charles Mety as trustee for said county to receive said bonds after they might be issued, and to deliver the same to the said company; that all of said acts of said Dawson and Forgner were without authority of law, among other reasons, because the route of the *said Missouri, Iowa and Nebraska Railway Company* was not and could not lie in or through Scotland county, because at no election, general or special, in said Scotland county held, have a majority or two-thirds of the qualified voters of said county assented to any subscription of stock or issue of bonds to said railroad company, or to any other company.

This allegation of failure to hold an election was not denied by plaintiff's reply, and stands confessed, while it constitutes alone a sufficient defense to every cause of action pleaded in the second count of plaintiff's amended petition, it would have been of no avail as against a proper declaration in said second count specifically showing that the Missouri, Iowa, and Nebraska railway company had become the successor of the charter power of the Alexandria and Bloomfield Railroad Company, and that the coupons sued on were made by Scotland county for interest on bonds described, but it will be observed that, not even in reply to any defense, four to fifteen inclusive of said answer to the second count of plaintiff's amended petition, has plaintiff alleged that the Missouri, Iowa and Nebraska Railway Company became the successor of the charter power of the Alexandria and Bloomfield Railroad Company by the requisite steps, especially by pleading the acceptance of the amendatory law of February 19, 1866 (page 70, printed Rec-

ord), authorizing the Alexandria and Bloomfield Railroad Company to change its name and route, with the remarkable proviso that only such parts of said law should become operative as might be formally accepted by said Alexandria and Bloomfield Railroad Company. Even if plaintiff relied solely on the false recitals which were inserted in the bonds Hill or the bank sent to McDonald for execution, it seems clear that he should have pleaded that the route of the Alexandria and Bloomfield Railroad Company was or may have been in Scotland County, as he did in his reply to the third answer to his first count involving one coupon, but utterly failed to do in any pleading concerning the 555 coupons in the second count of his petition declared upon. Responding in his reply to the allegation of the fifteenth defense that the route of the *Missouri, Iowa* and *Nebraska* Railway Company was not in Scotland County he merely avers "that the route of said railroad could and did lie through Scotland County."

Said 15th defense averred that without any other authority or acts than as thereinbefore set forth, said Dawson (one of the three Justices of the Court), during a vacation of said Court, met with Sterling McDonald, clerk of said Court, and signed as presiding Justice two hundred lithographed papers by each of which Scotland county purported to acknowledge itself indebted to the Missouri, Iowa and Nebraska Railway Company in the sum of one thousand dollars with *eight* per cent. interest coupons thereto annexed, and that the coupons in said second count described were detached from said pretended bonds; that thereafter said McDonald delivered said bonds to Charles Mety, Sept. 1st, 1871, as "trustee of Scotland county," who thereafter delivered the same to persons purporting to be officers of the Missouri, Iowa and Nebraska Railway Company; that about Sept. 11th, 1871, while said Mety still had said pretended bonds and coupons in his custody, Levi J. Wagner and other citizens *and tax-payers* of said county, instituted in the Circuit Court of said county a suit against said Mety, the Missouri, Iowa and Nebraska Railway Company and the three Justices of the County Court, for the purpose of enjoining the delivery of said bonds, requiring the same to be delivered up and cancelled, and to have all orders and acts concerning said bonds declared null and void. That said injunction was granted by E. V. Wilson, Judge of said Circuit Court, on the 21st of September, 1871, in accordance with the prayer of said petition; that all of said parties defendant had due notice thereof, and that said injunction was made perpetual upon the final hearing of said case in 1874, and that the Circuit Court to which said defendants had taken a change of venue in making said injunction perpetual ordered that the said pretended bonds and coupons, including all the coupons in 2d count of plaintiff's petition described, be delivered up and cancelled, and that the Supreme Court of Missouri fully affirmed said decree (Wagner *et al. v.* Mety *et al.*, 69 M. R., 150, page 316 printed Record), declaring such bonds to have been issued *ultra vires*, because there could not, under the circumstances, have been power in the County Court to subscribe to the stock of the Missouri, Iowa & Nebraska Railway Co., and also *ultra vires*, because it was confessed in said cause that said Missouri, Iowa & Nebraska Railway Co.

did without a *two-third vote of the directors* of said Company *abandon the route* of said Missouri, Iowa & Nebraska Railway which had been previously and lawfully established, located and constructed by way of Lurray, in Clark county, Missouri, and did without a two-thirds vote of the directors of said Railway Company unlawfully locate and establish an entirely new road or route for said railway in a different direction by way of Memphis, in Scotland county, Missouri; that at no election did two-thirds of the qualified voters of said county assent to said subscription of stock issue or delivery of bonds or change of *route*.

It was in said defense averred that plaintiff owned about 54 coupons from 18 bonds in this said second count of his petition described; that each of the remaining coupons in said count declared upon were owned severally or in common by the First National Bank of Warsaw, Illinois, Thomas B. Hill, Henry Hill, James R. Dodge, George Knox, and Emily Knox, his wife, born Hill; Charles H. Mellen, Edwin Manning, F. M. Drake, and James Fitzhenry, all of whom, excepting said First National Bank, were connected by blood or marriage; and that said parties confederated and conspired together, in the years 1870 and 1871, to obtain possession, and did obtain possession, of the several bonds and coupons hereinbefore described, in violation of law, by causing said Mety to deliver said bonds and coupons to the alleged officers of the Missouri, Iowa & Nebraska Railway Company, of which Company each of said parties was either an officer or stockholder; that said bonds and coupons thence passed, without consideration, to a company known as the Iowa Construction Company, of which company and of which bank aforesaid each of said parties was either an officer or stockholder, and thence, without consideration, were divided among said parties herein named, who caused certain brokers, upon their account, to make mock sales thereof to William Hill, who became the holder of same, as the agent and for account of said respective parties, without having paid value therefor, and that said bonds have been under the control of said several parties since the time when they left the hands of said Mety, and that plaintiff and every holder had actual notice of facts set forth in said defense.

Plaintiff's reply (page 20 printed Record) to these answers to the second count of plaintiff's amended petition merely denied generally each defense excepting the 15th. To that he not only made specific denials of defendant's allegations, but moreover pleaded as an estoppel the judgment of this court (upon *other coupons* alleged to have been detached from same bonds as were involved in said defense), in Thomas *v.* Scotland County, 94 U. S., 682, and that he and those under whom he claimed were induced to purchase said bonds, relying, among other things, upon the decision of the Supreme Court of the United States in case of Scotland County *v.* Thomas, 94 U. S., 682, which his own deposition (page 2, supplement printed Record) shows was decided after he had bought every bond he claimed. Under the law of Missouri, every material allegation of the reply is presumed to be denied by defendant without a responsive pleading.

The stipulation waiving a jury at page 2 was coupled with the proviso that if Judge Brewer did not try the case the right to a jury should be retained.

Said stipulation having been ignored, the case was tried before Judge Treat and a jury. After a jury of twelve men had been passed upon and accepted by plaintiff, and after defendant had challenged one juror, and his place supplied, and the entire jury had been accepted by both parties, the court (page 25, printed Record) ordered two other cases, wherein the First National Bank and Mellen were plaintiffs, to be consolidated with this case for the purpose of trial. Defendant excepted (page 26, printed Record) to the consolidation of said cases for trial before the same jury already accepted for the trial of this case, because each of said cases involved different parties, separate and different issues and pleadings; that said consolidation would violate the right of defendant to a separate trial of this cause. Passing over thirty-five pages of records of said two cases thus thrust into this, we find (page 61, printed record) that after the court allowed defendant's exception, counsel for plaintiff (page 62, printed Record), suggested that the consolidation restored him to his original rights.

The Court responded: "Certainly, and that is the *reason* I made the *suggestion*. *You may make a challenge*, if you desire, and so with the defendants."

Thereupon, contrary to defendant's exception, and in violation of the R. S. of Missouri, 1879, page 469, sec. 2795, the plaintiff was permitted to challenge without cause herein three of the jurors previously accepted by both sides to try this case. Plaintiff, against defendant's objections and exceptions, undertook to establish the special charter power which permitted subscription to stock without a previous vote of the electors, but utterly omitted two links in the chain: 1st, he failed to prove that section 2 of the amendatory act of the General Assembly of Missouri, Feb. 19, 1866 (page 70, printed Record), whereby the Alexandria and Bloomfield Railroad Company was authorized to change its name, was ever accepted by said Alexandria and Bloomfield R.R. Co., as required by section 4 thereof, which declared that only such parts of said law as might be thus accepted should become a law; or, second, to offer any map or testimony showing that the route of the Alexandria and Bloomfield R.R. Co., or of any company proven to be a lawful successor of said company, was or may have been in or through Scotland county. These facts were confessed in the agreed case of Thomas *v.* Scotland County, involving different coupons. (94 U. S., 682.) It was contended (pages 78, 71, printed Record) that such proof was the necessary foundation of plaintiff's claim, without which there could be no power in the County Court to subscribe stock or issue bonds. It is conceded that if the County Court had power and made an order determining facts within their discretion, such determination inserted in bonds made by such court would be conclusive in favor of innocent holders, but in this case it is contended, first, that the court had not the power to estop the county, and, secondly, that if it had, it did not do it, but that an unauthorized and limited agent did attempt so to do. Plaintiff attempted to establish in the following manner such estoppel: He introduced a witness, McDonald, who proved (pages 169–172 of printed Record) that in July, 1871, during a vacation of the County Court, one Dawson signed 200 bonds: that he (McDonald) attested said signature and affixed the ordinary seal of the County Court to bonds which Hill

or the bank had sent to him; that he (McDonald) was the clerk of the County Court, and that when court was in session said Dawson acted as presiding judge; that he (McDonald) attested said signature of Dawson and affixed the seal of the County Court to each of 200 bonds (page 88 of printed Record), each of which, excepting numbers of bonds and dates of counter-signature and delivery, was in words and figures as follows:

"$1,000. United States of America. No. 5.

"Eight per cent. Railroad Bond.

"County of Scotland. Twenty-five years.

"Know all men by these presents, that the County of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa & Nebraska Railway Company, a corporation existing under and by virtue of the laws of the State of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company (formerly Alexandria and Bloomfield Railroad Company), of the
261 State of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company, or bearer, at the Farmers' Loan and Trust Company, New York, on the thirty-first day of December, A. D. 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually in the city of New York, on the thirty-first day of December in each year as the same shall become due, on the presentation of the coupon hereto annexed. This bond being issued under and pursuant to an order of the County Court of said Scotland county for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri, entitled, 'An act to incorporate the Alexandria and Bloomfield Railroad Company,' approved February 9, 1857.

"In testimony whereof, the said County of Scotland has executed this bond by the presiding justice of the County Court of said county, under *the order* of said court, signing his name thereto, and the
252 clerk of said court, signing his name hereto, and the clerk of said court, under the order thereof, attesting the same, and affixing thereto the seal of said court. This done at the town of Memphis, in the County of Scotland, in the State of Missouri, this first day of September, A. D. 1870.

"WILLIAM DAWSON,
"*Presiding Justice of the County Court*
"*of Scotland County, Mo.*

"Attest:
"[SEAL.]

"STERLING McDONALD,
Clerk of the County Court of Scotland
"*County, Mo.*

"Countersigned and delivered this.....
....."*Trustee.*"

Those numbered 1 to 100 were proven to have been marked "countersigned and delivered Sept. 20, 1871," though actually so counter-

signed and delivered the following day. (Testimony of Mety, page 322, printed Record.) The bonds numbered 101 to 200 were those marked "countersigned and delivered December 11, 1871." (Pages 325 and 89, printed Record.) It will be contended that the Record shows an absolute failure upon plaintiff's part to produce or prove the *factum* of bonds numbered 1, 2, 3, 56, 86, 145, 146, 147, or coupons thereto pertaining. (Printed Record, pp. 169, 248, 249.)

The coupons which it was attempted to prove by McDonald to have been once attached to bonds produced, and which he had executed, excepting date of maturity and the number of coupon, or of the bond from which it purported to have been detached, were lithographs in words and figures, as follows:

"$80. MEMPHIS, Mo., *Sept.* 1, 1870.

"The County of Scotland, State of Missouri, will pay to the bearer on Dec. 31, 1873, at the Farmers' Loan and Trust Company, in New York, eighty dollars, being one year's interest on bond No. 5, for $1,000.

"S. McDONALD,
"*County Clerk.*"

[There is no such officer known to the laws of Missouri as county clerk.]

McDonald's title was clerk of the county court. His testimony that the lithographed coupons shown might once have been attached to the bonds he did execute and sign is shown (at page 172 printed Record) to have depended entirely upon the resemblance of the lithographed coupons shown him to those he once knew to have been attached to bonds signed by him. It will be observed that in cross-examination when shown a coupon evidently similar to plaintiff's (page 171 printed Record), he expressed hesitancy until plaintiff's counsel handed him one with the assurance that there was no doubt about that. Witness testified that if some one had printed copies of said lithographs he might not have been able to distinguish them from those about which he testified. Upon this evidence every coupon purporting to have been detached from eight bonds not produced by plaintiff was permitted to go to the jury against defendant's exception. (Pages 92, 164, 167, printed Record.)

Plaintiff evidently conceded that this evidence did not under the laws of Missouri make out the *factum* of those bonds which had been produced, because the law (General Statutes of Missouri, pages 555–83), provided that three Judges should constitute a County Court, and that a majority of them must join in the execution of acts like the making of bonds, or proof must be made of a proper delegation of such authority to execute said bonds; therefore plaintiff was forced to offer the order of the County Court of Aug. 9, 1870 (page 80, printed Record), not merely as a proof of authority but as the only evidence by which any delegation of authority to the single Judge, or the trustee who countersigned bonds on the face thereof, to make the instruments could be sustained. It was contended by defendant that every innocent purchaser was warned by the recitals on the face of the bonds that he must inquire as to the order permitting the *factum* by one Judge instead of

a majority of the three Judges, and also as to the official character, and as to the authority of the trustee, Mety, who marked the bonds on the face thereof as "countersigned and delivered Sept. 20, or Dec. 11, 1871;" that thus compelled by commercial law to take notice of an order of the County Court thus delegating authority to make an instrument, every purchaser of the paper, however innocent, was necessarily notified that the order, while it did appoint Mety trustee, and did authorize one Judge to execute certain bonds to the Missouri, Iowa and Nebraska Railway Company, did not in any manner "authorize the insertion of the false recitals, showing that the Alexandria and Nebraska City Railway Company was 'formerly the Alexandria and Bloomfield Railroad Company,' and the all-important recital that the bonds were issued as authorized by an act of the General Assembly of the State of Missouri, entitled 'An act to incorporate the Alexandria and Bloomfield Railroad Company, approved Feb. 9, 1857.'"

It will be shown by citation of authority that with the exception of the previous ruling of this court in favor of defendant (112 U. S., 183) every decision of any court, State or Federal, involving the Alexandria & Bloomfield Railroad charter, has been made upon "agreed cases" admitting by stipulation vitally important facts which the Record in this case demonstrates that it was not, and has never been, in the power of this or any other plaintiff to prove. Mety (page 322 printed Record) swears that all the bonds numbered below 101 were countersigned by him as delivered Sept. 20, 1871.

As he proves that the indemnifying bond against the injunction suit pending or to be brought in Scotland county, signed by Drake and Henry Hill (page 322), was delivered to him before he delivered the bonds, and that indemnifying bond is dated September 21, 1871; that or a later date than that was probably the actual date of countersignature. At pages 325 and 89, P. R., it is shown that the one hundred bonds numbered from 100 to 200 were countersigned and delivered Dec. 11, 1871, two months after Mety had been personally served with injunction and when he had been promised (page 324 of printed Record) by Drake, president of M., I. & N. R.R. Co., and also the Construction Company (page 170, printed Record), that he should be defended and protected. The testimony of Mety at pages 319–322, of Birch, at pages 345, 347, 349, and Mackey, at pages 333, 320, P. R., show that the bonds 1 to 100, marked countersigned Sept. 20, 1871, were carried out of the State of Missouri to avoid service of the injunction, of which plaintiff, Mety and all conspirators had actual notice. The testimony cited substantially made out every averment of the 15th defence herein described as to actual notice to the plaintiff and his co-conspirators, and the Court in his charge (page 360 of printed Record) evidently conceded that actual notice had been brought home to plaintiff. The first indemnifying bond against the injunction given to Mety by Drake, as president, and Henry Hill, as superintendent of railway company, is shown by the testimony of Mackey, at page 333, to have been discussed by plaintiff, who, at the suggestion of Henry Hill, declined to sign it because he was president of the First National Bank and thought Dodge ought not to sign it because he was cashier. That bond (page 322 of printed Record) fully affects everyone who read or

discussed it with notice of the object of Mety's flight to Warsaw. That object is shown to have been the sole subject of conversation with plaintiff and his co-conspirators (pages 332, 346 of printed Record.) The indemnifying bond is shown (pages 349, 323 of printed Record) to have been substituted for one that was "too strong" or "too good" for Mety. The second indemnifying bond (page 327 of printed Record) was infinitely weaker than the first.

Drake signed the first indemnifying bond to Mety against injunction suits (page 322), which Judge Cooper (page 319), on the 20th of September, 1871, informed him would be offered, as president of the Missouri, Iowa and Nebraska Railway Company.

McDonald (at page 170) proves that he was also president of the construction company. Plaintiff in his first deposition (page 2 of printed supplement to Record) testifies that either Drake or Henry Hill was at the head of the Iowa contracting or construction company here. The second indemnifying bond to Mety (page 325, printed Record), which he proves (page 324, printed Record) was executed and delivered on the 11th of December, 1871, in exchange for bonds numbered 101 to 200, is signed by Henry Hill as superintendent both of the M., I. & N. R.R. Co. and the Iowa contracting or construction company. Plaintiff, in his second deposition, when asked whether every one of the persons concerned in the coupons in this suit was not connected either with the railway company or with the aforesaid construction company (at page 14, printed supplement to Record) answered: "I know one that's not; Dodge, the First National Bank, is not." Dodge was cashier of the First National Bank and plaintiff was its president (page 321, printed Record).

Tobey & Co. (p. 234, printed Record) could not tell when, where, from whom, or at what price they bought the 61 bonds they sold the bank (prior to the institution of this suit) at fifty cents cash.

Plaintiff in his first deposition (page 2, supplement to printed Record) gives the number of every bond which each person or corporate body owned in this suit. Then in 1879, when his memory was fresh, he distinctly stated that he bought 30 or 40 thousand dollars of bonds and coupons from Tobey & Co. (each bond being for one thousand dollars). In that deposition he swore that he owned the coupons from bond No. 55 (then, and after the trial began, declared upon in this suit and dismissed by him at page 63), which he endeavored to confound with bond No. 75, from which coupons were merged in the judgment (page 165). There was no competent proof of any previous innocent holder of said bond. Plaintiff's first deposition showed (p. 2, supplement to Record) that Henry Hill, chief officer, in whose name accounts of contracting or reconstructing company were kept, a director and stockholder in the Missouri, Iowa and Nebraska Railroad Company, who with Drake signed the two indemnifying bonds to Mety, was allotted bonds involving twenty-seven coupons left undismissed in this suit, and each of the conspirators a certain number indicated. Stone (page 191), Townsend (page 217), Smith (page 182) were stockholders in the construction company. Smith's statement that "along in 1871 or 1872" he was president of the company is not inconsistent with McDonald's testimony that Drake was president of that company, as also of the railroad

company, when the fraud concerning bonds was begun or the bonds obtained. Gebhard (page 226) was stockholder in both the railroad company and the contracting company; these men swore (see page 243, printed Record) that they had no notice of Wagner's suit when they bought the coupons in Hill's suit; one of three members of the firm of Zeno, Secor & Co. (the other two dead) testified that he had not heard of the Wagner suit, and undertook to prove the innocence of his partners by saying that they never told him that they had notice. Five thousand dollars of Hill's judgment was upon Secor's coupons.

Defendant presented seven separate declarations of law to the jury which were severally refused by the court subject to defendant's exceptions, who finally substantially took from the jury the right to pass upon every issue made by the evidence, by charging the jury, in this and the cases consolidated with it, that unless actual notice of the pendency of the suit of Wagner *v.* Mety and others had been traced through all the transferees of the paper, the jury should find for plaintiff for *the sums stated.* The printed Record (page 362) shows that defendant was recognized as formally repeating all exceptions previously noted, and thereafter excepted to the court's charge because it took from the jury the right to pass upon material issues of fact presented, and especially to that part of the charge which took from the jury the right to pass upon the question as to whether William Hill, having actual knowledge of the pendency of the suit of Wagner *v.* Mety *et al.*, would be precluded from recovering in this action. The court rendered judgment (see page 25, printed Record) for $46,944, with *seven* per cent., although the law of Missouri authorized only six per cent. upon judgment upon instruments wherein no rate of interest was named. (R. S. of Mo., 1879, Sec. 2725, page 458.)

Although it has been declared that Sec. 914, R. S. U. S., requiring Federal courts to conform to State practice in the trials of civil actions, does not alter the practice of this Court upon writs of error sued out in such cases, it is believed that this Court may notice any error manifest upon the records of such cases.

Throughout this Record will be traced the utter confusion of proceedings, and the consequent injustice to which defendant was subjected by the rulings of the lower court in consolidating this with other cases, and permitting plaintiff during the progress of the trial upon one hand to dismiss thousands of dollars of coupons, and upon the other to "transfer by memorandum to this case," and compute in judgment not only coupons previously filed and cancelled in other cases, but others which he had already dismissed upon the Record in this action six months previous to trial (printed Record, pages 165, 167, 18), other coupons (page 167, printed Record), which had not even been declared upon in his amended petition, but matured four years after it was filed, and yet other coupons (from bonds 16, 17, and 56) concerning which plaintiff and the court below checked cross-examination of plaintiff's witness, compelling defendant to accept plaintiff's assurance that they had been dismissed from and were not in this suit, eleven of which coupons notwithstanding appear in plaintiff's list of undismissed coupons (page 165, printed Record) computed in his judgment, all of which more fully appears in assignments of error. It will be shown that even

accepting as correct the list of coupons purporting to remain undismissed, and including coupons therein named which the record proves had been dismissed from this suit, plaintiff's judgment still exceeds by twenty-five hundred dollars the amount for which it should have been entered. Defendant, within four days after judgment, filed motion in arrest of judgment because of excessive judgment, defective petition, etc., and a motion for a new trial setting out various grounds for rehearing, now here assigned as errors. The bill of exceptions shows that contrary to defendant's exceptions they were overruled and that all the evidence offered by either party during the entire trial, all the rulings of the lower court and exceptions thereto, the several declarations of law refused to defendant contrary to its exceptions, and the charge of the court to the jury are included in said bill of exceptions, made part of the record herein.

ASSIGNMENT OF ERRORS.

I.

Upon the trial of this cause the court below erred in giving, contrary to defendant's objections and exception (page 262, printed Record), the following charge to the jury:

WM. HILL *v.* SCOTLAND COUNTY.

CHARLES H. MELLEN *v.* SCOTLAND COUNTY.

FIRST NATIONAL BANK OF WARSAW *v.* SCOTLAND COUNTY.

TREAT, *J.:*

"GENTLEMEN OF THE JURY: There are three cases submitted to you, and they depend essentially upon the same propositions of law. The court has reduced to writing the views which must control these cases.

"The court declares the law to be that the plaintiff in each case is entitled to recover on all such obligations sued on, respectively, as he has proved were executed and delivered in manner and form as stated; that is, duly signed by Dawson, the presiding justice of the County Court of Scotland county, and Sterling McDonald, clerk of said county, and countersigned by Charles Mety, under seal of said county."

"Concerning the signatures there seems to be no dispute. *There are some questions of law connected therewith, which have been presented, as to which you need not be troubled. Exceptions have been saved by counsel;* but the court instructs you that these bonds purport to be signed by Dawson, the presiding justice, by Sterling McDonald, the clerk, and countersigned by Charles Mety. I suppose there is as to said signatures no dispute as a matter of fact. Now, producing these bonds, which are negotiable in their character, together with the coupons attached, the plaintiffs, respectively, will be entitled to recover, unless it has been proved that the plaintiff and each of the persons through whom he derived title to said obligations had actual notice of the pendency of the suit of Levi J. Wagner *et al. v.* Mety *et al.*, the record of which has been produced in evidence."

"You understand, gentlemen, that there was a suit instituted by Levi J. Wagner and others to test the validity of these bonds, with a view of determining whether they were valid or invalid. The result of that suit was in favor of the county, to wit, that the bonds were void and should be delivered up to be cancelled; but those bonds that were in the hands of *bona fide* holders for value, they knowing nothing about the suit or invalidity of the bonds, would not be concluded thereby, hence, under the rules of law governing negotiable paper of this character, though a party may know of the infirmity of the paper, if he derives

title thereto through a person who knows nothing about it, he holds the paper as if valid. In other words, if this were not so, and either of you receive negotiable paper through an innocent party, and that paper is found invalid afterward as between the original parties, you might go back on the innocent party to reimburse you, and thus through the ordinary course of transfers suits might run indefinitely through a series of transactions; but, to give sanctity to commercial paper, the law is that if one innocent party in the course of the transaction holds the paper for value, all behind him stand in his shoes, and are as if equally innocent parties. I have gone a step farther than the ruling which was specifically before the Supreme Court. I say that this paper is valid in the hands of a party who received it for value without actual notice of the pendency of the suit of Wagner and others, but if he and each intermediate party from the first delivery of these bonds and coupons also had notice of such suit or other infirmity then no recovery can be had."

"Actual notice that the bonds and warrants were delivered by said Mety for the purpose of avoiding a proceeding in equity for the cancellation of said bonds and coupons, which contemplated proceeding was known to said Mety to be about to be instituted, and which was soon thereafter instituted, the same being the case above mentioned, would, if said actual notice existed as to the plaintiff and *each intermediate* party, prevent plaintiff's recovery herein."

"By that is meant simply this—that if actual notice existed, so far as all the intermediate parties were concerned in the transfer of this paper from one to the other, of the actual pendency of that suit, or of a contrivance by Mety, through this indemnity bond, to escape the injunction, the same rule obtained."

"If the obligations sued on were duly executed, as above mentioned, and delivered by said Mety, and were thereafter purchased for value by the plaintiff from persons who had acquired the same for value without notice of said suit or of any fraud in the execution and delivery of the same, as above stated, then as to such obligations the plaintiff is entitled to recover."

"On the other hand, if the plaintiff and each of the persons through whom he derived title had actual notice of said Wagner suit, or of the delivery of said obligations by Mety to escape said suit, known to be about to be instituted, then as to such of said obligations there can be no recovery."

"In other words, in order to defeat the plaintiff's rights in this case, it is necessary to trace from the original delivery by Mety of those bonds through all the various parties in the course of the transfers an actual notice of that pending suit or of the fraud mentioned, and in the light of the testimony it seems that there is no need of going any further. One link broken in the chain breaks the chain."

"I will only state, in order that the jury may understand this, in a condensed form, that where negotiable paper is put upon the open market and a purchaser knows nothing of its infirmity and pays value for it, although the person from whom he purchases knew there was an infirmity in the paper, yet he is not charged with notice of what others knew, and if that paper passes through the hands of one or more inno-

cent parties, and finally comes back to him, and he doubts the validity or infirmity of the paper, he is protected by the innocent parties who stand behind him. That is all that means. Otherwise, negotiable paper would be set afloat in the community which might be valueless; so that nothing remains for you but to find a verdict for the plaintiff for the sums stated, unless *actual notice*, as stated, is traced through all the transferees of the paper. This raises a very important question for the Supreme Court of the United States to pass upon in the light of its recent decision in the principal case." Because said charge substantially took from the jury the right to pass upon material issues of fact presented; it substantially declared that the jury were precluded from every inquiry except as to whether in this case defendant had accomplished the task of tracing through every transferee of the paper or instruments in suit (a majority of which transferees, as suggested in the charge, plaintiff's own testimony had proven to be absolutely unknown) actual notice of the pendency of the suit of Wagner *et al. v.* Mety *et al.* The charge avowedly presented but a single proposition or question, and was so framed as to obviate the obligation to make to specific parts thereof separate exceptions. Taken as a whole it virtually directed the jury that upon the case as submitted to them they must find for plaintiff.

Among the issues of fact which said charge took from the jury the right to pass upon, was evidence proving or sufficiently tending to prove that though the bonds may have passed through the hands of unknown persons not affirmatively shown to have had actual notice of their final execution and delivery during the pendency of the suit of Wagner *et al. v.* Mety *et al.*, they had come back to the conspirators, who caused them to be delivered in violation of law, in defiance of the mandate of a court of competent jurisdiction, which, with actual notice to them, adjudged the bonds void, declared that they were issued *ultra vires*, and had ordered their cancellation in a final judgment which this court, in a previous hearing of this case, had declared binding upon the Missouri, Iowa and Nebraska Railway Company, and upon all who were chargeable with actual notice of its pendency; it precluded the consideration of evidence showing that Henry Hill, as a director and stockholder of the Missouri, Iowa and Nebraska Railway Company, was, substantially, one of the original payees of the bonds issued to said company, and therefore precluded from invoking the protection of any innocent holding as to the thousands of dollars of coupons, in this judgment merged, which plaintiff testified that he bought for Henry Hill and were owned by him, and that said Henry Hill, plaintiff, and Drake had actual notice of the pendency of said suit of Wagner *et al. v.* Mety *et al.* (Pages 320, 322, and 349 printed Record.) Said charge took from the jury the right to pass upon the question as to whether William Hill, having actual notice of the pendency of the suit of Wagner *et al. v.* Mety *et al.*, would be precluded from recovering in this action. The testimony hereinafter cited substantially made out every averment of the 15th defense as to notice to the plaintiff and his co-conspirators, and the Court in his charge (page 360 of printed Record) evidently conceded that actual notice had been brought home to plaintiff. The tes-

timony of Mety at pages 319–322, of Birch at pages 345, 347, 349, and Mackey at pages 333, 320 P. R., show that the bonds 1 to 100, marked countersigned Sept. 20, 1871, were carried out of the State of Missouri to avoid service of the injunction, of which plaintiff Mety and all conspirators had actual notice. The first indemnifying bond against the injunction given to Mety by Drake, as president, and Henry Hill, as superintendent of railway company, is shown by the testimony of Mackey, at page 333, to have been discussed by plaintiff, who, at the suggestion of Henry Hill, declined to sign it because he was president of the First National Bank, and thought Dodge ought not to sign it because he was cashier. That bond (page 322 of printed Record) fully affects every one who read or discussed it with notice of the object of Mety's flight to Warsaw. That object is shown to have been the sole subject of conversation with plaintiff and his co-conspirators (pages 332, 346 of printed Record). The indemnifying bond is shown (pages 349, 323 of printed Record) to have been substituted for one that was "too strong" or "too good" for Mety. The second indemnifying bond (page 327 of printed Record) was infinitely weaker than the first.

Drake signed the first indemnifying bond to Mety against injunction suits (page 322), which Judge Cooper (page 319), on the 20th of September, 1871, informed him might be offered, as president of the Missouri, Iowa and Nebraska Railway Company.

McDonald (at page 170) proves that he was also president of the construction company. Plaintiff, in his first deposition (page 2 of printed supplement to Record), testifies that either Drake or Henry Hill was at the head of the Iowa contracting or construction company here.

At pages 325 and 89, P. R., it is shown that the one hundred bonds numbered from 100 to 200 were countersigned and delivered Dec. 11, 1871, two months after Mety had been personally served with injunction and when he had been promised (page 324 of printed Record) by Drake, president of M., I. & N. R.R. Co., and also of the Construction Company (page 170, printed Record), that he should be defended and protected.

The second indemnifying bond to Mety (page 325, proves at page 324 printed Record) was executed and delivered on the 11th of December, 1871, in exchange for bonds numbered 101 to 200, is signed by Henry Hill as superintendent *both* of the *M., I. & N. R.R. Co.* and the *Iowa Contracting or Construction Company.* Plaintiff, in his second deposition, when asked whether every one of the persons concerned in the coupons in this suit was not connected either with the railway company or with the aforesaid construction company (at page 14, printed supplement to Record), answered, "I know one's that's not; Dodge, the First National Bank, is not." Dodge was cashier of the First National Bank, and plaintiff was its president (page 329 printed Record).

Tobey & Co. (page 234, P. R.) could not tell when, where, from whom, or at what price they bought the 61 bonds they sold the bank (prior to the institution of this suit) at fifty cents cash.

Plaintiff in his first deposition (page 2, supplement to printed Rec-

ord) gives the number of every bond which each person or corporate body owned in this suit. Then in 1879, when his memory was fresh, he distinctly stated that he bought *thirty* or *forty* thousand dollars of bonds and coupons from Tobey & Co. (each bond being for one thousand dollars). In that deposition he swore that he owned the coupons from bond No. 55 (then and after the trial began, declared upon in this suit and dismissed by him at page 63), which he endeavored to confound with bond No. 75, from which coupons were merged in the judgment (page 165). There was no competent proof of any previous innocent holder of said bond, though plaintiff's testimony showed a previous holder. Plaintiff's first deposition showed (page 2, supplement to Record) that Henry Hill, chief officer, in whose name accounts of contracting or reconstructing company were kept, a director and stockholder in the Missouri, Iowa and Nebraska Railroad Company, who with Drake signed the two indemnifying bonds to Mety, was allotted bonds involving twenty-seven coupons left undismissed in this suit and each of the conspirators a certain number indicated. Stone (page 191), Townsend (page 217), Smith (page 182) were stockholders in the construction company. Smith's statement that "along in 1871 or 1872" he was president of the company, is not inconsistent with McDonald's testimony that Drake was president of that company as also of the railroad company, when the fraud concerning bonds was begun or the bonds obtained; Gebhard (page 226) was stockholder in both the railroad company and the contracting company; these men swore (see page 243, printed Record) that they had no notice of Wagner's suit when they bought the coupons in Hill's suit; one of three members of the firm of Zeno, Secor & Co. (the other two dead) testified that he had not heard of the Wagner suit, and undertook to prove the innocence of his partners, by saying that they never told him that they had notice. Five thousand dollars of Hill's judgment was upon Secor's coupons. Page 243 printed record

The conflicting statements of Kirk and plaintiff concerning the number of bonds purchased, and the party who purchased them were irreconcilable. Plaintiff's testimony, that he bought all said bonds (which Kirk swore he sold to the bank) *individually* from brokers who "were very careful not to let him know from whose hands they came" (page 16, plaintiff's 2d deposition), indicated that there were intermediate transfers after Kirk sold to the bank and was evidence of the conspiracy to make mock sales pleaded by defendant.

If the bonds were ever really sold, the price (page 246, printed Record) was about one-fourth of principal and accrued interest, plaintiff (page 18, 2d deposition of William Hill) after stating that he bought coupons for Dodge, the bank, and Geo. S. Knox involved in this suit, shows that he sometimes bought without consulting them. The testimony (pages 225, 243) shows that plaintiff individually or as president of the bank purchased years before the trial the coupons which ten years ago he swore belonged to Secor & Co. and Gebhard, and that upon his own showing (page 6 of plaintiff's first deposition) he had previously learned of the final adjudication in case of Wagner *et al. v.* Mety *et al.* There was no sufficient evidence that the coupons from bonds 1, 2, 3, 56, 86, 145, 146, 147 were ever detached from any bonds of Scotland county

(pages 168, 169, printed Record); the depositions of Griffin (printed Record, page 199) did not name all of said coupons and spoke of forty dollar coupons instead of eighty; plaintiff bought knowing that the bonds were contested (page 5, first deposition; page 16, second deposition). From said unproven bonds, 25 unproven coupons were merged in plaintiff's judgment (pages 164 and 165, printed Record).

II.

It is manifest from the record herein (printed Record, pages 361, 362) that the court below erred in giving, contrary to defendant's exception, the following part of the charge to the jury:

"In other words, in order to defeat the plaintiff's rights in this case, it is necessary to trace, from the original delivery by Mety of those bonds, through all the various parties in the course of the transfers, an actual notice of that pending suit or of the fraud mentioned, and in the light of the testimony there seems no need of going any further. One link broken breaks the chain."

Because said part of the charge took from the jury the right to pass upon the question as to whether William Hill, having actual notice of the pendency of the suit of Wagner *et al. v.* Mety *et al.*, would be precluded from recovering in this action.

In order to avoid unnecessary repetition plaintiff in error prays that herein and in the succeeding assignments of error its citations of evidence set forth in support of the first assignment of error may be taken and considered as formally repeated.

III.

The court below erred upon the trial of this cause in refusing, contrary to defendant's request and exceptions (printed Record, pages 359–360), the following instruction or declaration of law to the jury:

The court declares the law to be that if the jury believe from the evidence that William Hill, the plaintiff herein, did, before the time at which he purchased either of the coupons in this suit involved, have actual notice of the pendency of the suit instituted by Levi J. Wagner *et al. v.* Charles Mety in the Circuit Court of Scotland county, in the State of Missouri, and thence carried by change of venue to Shelby county, Missouri, in the Circuit Court of which last-named county the judgment was rendered, a transcript whereof has been offered in evidence by defendant Scotland county, then the jury are instructed that as to each and every coupon in this suit involved which said William Hill purchased at any time after having actual notice of the pendency of said suit of Wagner *et al. v.* Mety *et al.* plaintiff cannot recover a judgment herein, but as to each and every such coupon the jury must find for the defendant.

IV.

The court below erred upon the trial of this cause in refusing, contrary to defendant's request and exceptions (printed Record, pages

359–360), to grant the following instruction or declaration of law to the jury:

The court declares the law to be that if at the time or times of making purchases of either of the coupons in this suit declared upon, William Hill, the plaintiff, had actual knowledge of the pendency of or judgment in case of Levi J. Wagner *et al. v.* Mety *et al.*, and if the jury so find, they are instructed that as to any such coupon purchased by plaintiff, whether for himself or as agent for other persons, no recovery of judgment can be herein had.

V.

It is manifest from the Record in this case that the court below erred in permitting (contrary to defendant's exceptions, page 78 of printed Record) the plaintiff to introduce the articles of consolidation between Alexandria and Nebraska City Railroad Company and Iowa Southern Railroad, without previously showing that said Alexandria and Nebraska Railroad Company was the successor of the Alexandria and Bloomfield Railroad Company, especially in omitting to prove, as demanded by defendant, that the act of the General Assembly of the State of Missouri, approved Feb. 19, 1866, amendatory of the act incorporating the Alexandria and Bloomfield R.R. Co., read in evidence by plaintiff against defendant's objection (page 70, printed Record), had been accepted in whole or in part by the Alexandria and Bloomfield Railroad Company as required by the terms of Sec. 4, of said amendatory act, before any part thereof could become a law.

Said amendatory act provided by Sec. 1 that the Alexandria and Bloomfield Railroad Company might change the corporate name of said Company to that of the Alexandria and Nebraska City Railroad; by Sec. 2, that it might extend its route; by Sec. 3, that it might consolidate with other roads; by Sec. 4, that the whole or any section of said act which might by order of a majority of the Board of Directors of said Alexandria and Bloomfield Railroad, at a meeting for that purpose called after ninety days written notice to each director, stating fully the object of said meeting, shall be in force from and after such adoption.

VI.

The Court below erred upon the trial of this cause in refusing, contrary to the request and exceptions of defendant (printed Record, pages 359, 360) the following instruction or declaration of law to the jury:

The Court declares the law to be as follows: If the jury find from the evidence that during a vacation of the County Court of Scotland county, Missouri, about the month of July, 1871, the bonds from which coupons sued on were detached, were executed by William Dawson signing his name as presiding justice of said county and by Sterling McDonald signing his name as Clerk of said Court and affixing the seal of said County Court to each of said bonds, and that no other order for the execution of said bonds had been made by said County Court except the order of said Court dated August 9, 1870, offered in

evidence by plaintiff, then the jury are instructed that there was no authority in said officers to insert in said bonds the words reciting that the Alexandria and Nebraska City Railroad Company was formerly the Alexandria and Bloomfield Railroad Company or the words reciting that said bonds were issued under and pursuant to an order of the County Court for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company as authorized by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9, 1857, and the County defendant cannot be estopped by said recital from denying that the privileges of the Alexandria and Bloomfield Railroad Company had vested in the Missouri, Iowa and Nebraska Railway Company.

VII.

The Court below erred upon the trial of this cause in refusing, contrary to defendant's request and exceptions (pages 359–360, printed Record), the following instruction or declaration of law to the jury:

The Court declares the law to be that an act of the General Assembly of the State of Missouri entitled "An act to amend an act to incorporate the Alexandria and Bloomfield Railroad Company," approved Feb. 9, 1857, authorizing said Company to change the incorporate name, also authorizing said Company to extend said road from a point at or near Luray, in Clark county, Missouri, to Nebraska City, in Nebraska Territory, by way of or near Rockport, in Atchison county, Missouri, and also authorizing said Company to adopt all or any of the sections of this act, the same to be binding on said Railroad Company, approved Feb. 19, 1866, was and ever since has been inoperative, null, and void, because said act was not in conformity with but was repugnant to the organic or constitutional law of the State of Missouri then, *i. e.*, Feb. 19, 1866, in force in the State of Missouri. That said act did not confer upon the Alexandria and Bloomfield Railroad Company the right to change its corporate name or any of the several rights in said act set forth. That the plaintiff herein has not offered competent or sufficient evidence that the privileges of the Alexandria and Bloomfield Railroad Company under its charter of Feb. 9, 1857, ever lawfully passed to or vested in the Company designated as the Missouri, Iowa and Nebraska Railway Company, and that in the absence of such evidence of transfer of said privileges there was no power in the County Court of Scotland county, in the State of Missouri, to subscribe stock or issue bonds to the said Missouri, Iowa and Nebraska Railway Company without the condition precedent of the assent of two-thirds of the qualified voters of such county at a general or special election therein held, and it has been admitted that no such election was held; that in the absence of a lawful transfer of said privileges of said Alexandria and Bloomfield Railroad Company to said Missouri, Iowa and Nebraska Railway Company, the County Court of Scotland county had no power to estop said Scotland county by any recitals contained in the bonds alleged to have been executed by authority of said County Court, because the act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company, approved

Feb. 9, 1857," under the sole authority of which said bonds allege same to have been executed, did not vest said County Court with power to make bonds to the Missouri, Iowa and Nebraska Railway Company or to determine whether there had been consolidated in said last-named Company the Alexandria and Nebraska City Railroad Company and the Iowa Southern Railway Company, or to determine whether said Alexandria and Nebraska City Railroad Company was formerly the "Alexandria and Bloomfield Railroad Company." The recitals in said bonds offered in evidence by plaintiff made it the duty of every purchaser of such bonds to enquire whether there was legislative authority in the Alexandria and Bloomfield Railroad Company to change its name to that of the Alexandria and Nebraska City Railroad Company; every purchaser of such bonds was bound to know that the only attempt of the Legislature to confer such authority was contained in the unconstitutional and void act herebefore referred to. Such being the law applicable to this case, the jury must find for the defendant.

The statement of facts upon which this instruction was based is set forth fully in the IX assignment; the organic law showing the unconstitutionality of the amendatory act of Feb. 19, 1866, therein described, is set forth at page 41 of this brief.

VIII.

The court below erred upon the trial of this cause in refusing, contrary to defendant's request and exceptions (pages 359, 360, printed Record), the following instruction or declaration of law to the jury: "The court declares the law to be that under the pleadings herein plaintiff cannot recover upon any coupon declared upon in the second count of his petition, unless he has first established affirmatively to the satisfaction of the jury that such coupon was the act and deed of Scotland county, Missouri. It is not sufficient that plaintiff may have shown that the signatures of the persons purporting to have executed the several bonds are those of the presiding judge of the County Court of Scotland county, and of the Clerk of said Court, and that said bonds are sealed with the seal of said County Court. It is incumbent upon plaintiff further to show that the County Court, by an order upon its records made, empowered said persons to execute said bonds; that the County Court of Scotland county aforesaid had authority to make such order, and that the coupons aforesaid were detached from said bonds. If the County Court aforesaid had authority to make such order, plaintiff has nevertheless failed to offer competent evidence of such fact, and the jury must find for defendant." The statement of facts upon which this instruction was based is fully set forth in ninth assignment of error.

IX.

The court below erred in ruling contrary to defendant's objections and exceptions (pages 88, 85, 86, and 78, printed Record) that bond No. 4, and the other bonds offered by plaintiff should be received in evidence.

Each of said bonds, excepting the number and date of countersignature thereof, and delivery by trustee, was identical in form with said bond number 4, which was in words and figures as follows:

"$1,000. United States of America. No. 4.

"Eight per cent. Railroad Bond.

"County of Scotland. Twenty-five years.

"Know all men by these presents, that the County of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa & Nebraska Railway Company, a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, formed by consolidation of the Alexander & Nebraska City Railroad Com-
251 pany (*formerly Alexandria & Bloomfield Railroad Company*), of the State of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa & Nebraska Railway Company, or bearer, at the Farmers' Loan & Trust Company, New York, on the 31st day of December, A. D. 1895, together with interest thereon from the 31st day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually in the city of New York, on the thirty-first day of December in each year as the same shall become due, on the presentation of the coupon hereto annexed. This bond being issued under and pursuant to an order of the County Court of said Scotland county for subscription to the stock of the Missouri, Iowa & Nebraska Railway Company, *as authorized by an act of the General Assembly of the State of Missouri, entitled 'An act to incorporate the Alexandria & Bloomfield Railroad Company,'* approved February 9, 1857.

"In testimony whereof, the said County of Scotland has executed this bond by the presiding justice of the County Court of said
252 county, under the order of the said court, signing his name hereto, and the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court. This done at the town of Memphis, in the County of Scotland, in the State of Missouri, the first day of September, A. D. 1870.

"WILLIAM DAWSON,

"*Presiding Justice of the County Court of Scotland County, Mo.*

"Attest. STERLING McDONALD,

"[SEAL.] *Clerk of the County Court of Scotland County, Mo.*

"Countersigned and delivered this 20th day of September, 1871.

"CHARLES METY,

"*Trustee.*

"Each of said bonds numbered above 100 was marked countersigned and delivered this 11th day of December, 1871.

"CHARLES METY,

"*Trustee.*"

As a foundation for the introduction of said bonds, plaintiff, against defendant's objections and exceptions, undertook to establish the special charter power which permitted subscription to stock without a previous

vote of the electors, but utterly omitted two links in the chain. 1st, he failed to prove that section 1 of the amendatory act of the General Assembly of Missouri, Feb. 19, 1866, page 70, printed Record, whereby the Alexandria and Bloomfield Railroad Company was authorized to change its name, was ever accepted by said Alexandria and Bloomfield R.R. Co., as required by Sec. 4 thereof, which declared that only such parts of said law as might be thus accepted should become a law; or second, to offer any map or testimony showing that the route of the Alexandria and Bloomfield R.R. Co., or of any company proven to be a lawful successor of said company, was or may have been in or through Scotland county. These facts were admitted by stipulation in the agreed case of Thomas *v.* Scotland County, involving different coupons. (94 U. S., 682). It was contended (pages 78, 71 printed Record) that such proof was the necessary foundation of plaintiff's claim, without which there could be no power in the County Court to subscribe stock or issue bonds. It is conceded that if the County Court had power and made an order determining facts within their discretion, such determination inserted in bonds made by such court would be conclusive in favor of innocent holders, but in this case it is contended, first, that the court had not the power to estop the county, and secondly, that if it had, it did not do it, but that an unauthorized and limited agent did attempt so to do. Plaintiff attempted to establish in the following manner such estoppel: He introduced a witness, McDonald, who proved (pages 169–172 of printed Record) that in July, 1871, during a vacation of the County Court, one Dawson signed 200 bonds; that he (McDonald) attested said signature and affixed the ordinary seal of the County Court to bonds which Hill or the bank had sent to him; that he (McDonald) was the Clerk of the County Court, and that when court was in session said Dawson acted as presiding judge; that he (McDonald) attested said signature of Dawson and affixed the seal of the County Court to each of 200 bonds (page 88 of printed Record), each of which, excepting numbers of bonds and dates of counter-signature and delivery, was in words and figures set forth in form of bond herein described.

Plaintiff seemingly conceded that this evidence did not under the laws of Missouri make out the *factum* of those bonds which had been produced, because that law (General Statutes of Missouri, pages 555–83) provided that three judges should constitute a County Court, and that a majority of them must join in the execution of acts like the making of bonds, or proof must be made of a proper delegation of such authority to execute said bonds; therefore plaintiff was forced to offer the order of the County Court of Aug. 9, 1870 (page 80, printed Record), not merely as a proof of authority, but as the only evidence by which any delegation of authority to the single judge, or the trustee who countersigned bonds on the face thereof, to make the instruments, could be sustained. It was contended by defendant that every innocent purchaser was warned by the recitals on the face of the bonds that he must inquire as to the order permitting the *factum* by one judge instead of a majority of the three judges, and also as to the official character, and as to the authority of the trustee, Mety, who marked the bonds on the face thereof as "countersigned and delivered Sept.

20 or Dec. 11, 1871;" that thus compelled by commercial law to take notice of an order of the County Court thus delegating authority to make an instrument, every purchaser of the paper, however innocent, was necessarily notified that the order, while it did appoint Mety trustee, and did authorize one judge to execute certain bonds to the Missouri, Iowa and Nebraska Railway Company, did not in any manner "authorize the insertion of the false recitals, showing that the Alexandria and Nebraska City Railway Company was formerly the Alexandria and Bloomfield Railroad Company," and the all-important recital that the bonds were issued as authorized by an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company, approved Feb. 9, 1857."

X.

The court below erred in ruling, contrary to defendant's objections and exceptions (pages 92, 89, 86, 87, printed Record), that coupon purporting to be for one year's interest upon bond number 4, and each of the several coupons offered by plaintiff should be received in evidence in this cause. Each of said coupons, ultimately merged in judgment in this cause by reason of said ruling, were, excepting number of bond to which it purported to have pertained and date of maturity, a lithographed paper, in words and figures as follows:

"RAILROAD BOND COUPON:

"MEMPHIS, MISSOURI, *September 1st*, 1870.

"The County of Scotland, State of Missouri, will pay to the bearer on December 31st, 1873, at the Farmers' Loan and Trust Company, in New York, $80, being one year's interest on Bond No. 4, for one thousand dollars.

"[Signed] S. McDONALD,
"*County Clerk.*"

In addition to testimony cited in next preceding assignment of error, it was shown that McDonald's title was clerk of the County Court. His testimony that the lithographed coupons shown might once have been attached to the bonds he did execute and sign is shown (at page 172, printed Record) to have depended entirely upon the resemblance of the lithographed coupons shown him to those he once knew to have been attached to bonds signed by him. It will be observed that in cross-examination, when shown a coupon evidently similar to plaintiff's (page 171, printed Record), he expressed hesitancy until plaintiff's counsel handed him one, with the assurance that there was no doubt about that. Witness testified that if some one had printed copies of said lithographs he might not have been able to distinguish them from those about which he testified. Upon this evidence 25 coupons, purporting to have been detached from eight bonds not produced by plaintiff, were permitted to go to the jury against defendant's exception (pages 92, 164, 167, printed Record).

Against the exceptions herein noted the Court admitted all the cancelled coupons, the previously dismissed and transferred coupons referred to in the sixteenth, fifteenth, and fourteenth assignments of error, and all the coupons declared upon by plaintiff and actually undismissed; in short, every coupon merged in plaintiff's judgment.

XI.

It is manifest upon the Record that the court below erred in ordering seven per cent. interest upon plaintiff's judgment as shown at page 25 of the printed Record. This Court notices judicially that where no interest is stipulated the laws of the State of Missouri, in force at the date of said judgment (Revised Statutes of Missouri, 1879, volume 1, page 458, section 2725, printed in full at page 34 of this brief), provided that the same should bear six per cent. interest. The printed Record shows at page 92 that each of the instruments merged in aforesaid judgment excepting date of maturity and the number of coupon, or of the bond from which it purported to have been detached, was in words and figures, as follows:

"RAILROAD BOND COUPON.

"$80. MEMPHIS, Mo., *Sept.* 1, 1870.

"The County of Scotland, State of Missouri, will pay to the bearer, on December 31, , at the Farmers' Loan and Trust Company, in New York, eighty dollars, being one year's interest on bond No. , for $1,000.

"S. McDONALD,
"*County Clerk.*"

XII.

It is manifest from the Record in this cause (printed Record, pages 354 and 355), that the court below erred in permitting interest to be computed upon the several coupons merged in plaintiff's judgment at the rate of seven per cent. per annum. The several coupons were in the form set forth at page 92 of printed Record, and in next preceding assignment of errors, and the entire statute relied upon is set forth at page 35 of this brief.

XIII.

It is manifest from the Record in this cause (pages 63, 24, 4), that the lower court erred in permitting plaintiff during the trial to dismiss "without prejudice" many coupons declared upon in the second count of his petition without dismissing his suit as to all remaining coupons in said count of his petition declared upon.

XIV.

It is manifest from the Record in this cause that the court below erred in permitting plaintiff to retain in his list of undismissed coupons (page

165, printed Record) and merge in his judgment herein (under the charge of the court, pages 362, 165, 354, printed Record) the following described eleven coupons for eighty dollars each, viz: 3d, 4th, 5th, 6th, maturing coupons from bonds, numbered 16 and 17, 7th maturing coupon, from bond, numbered 56 (page 165 printed Record), because in the colloquy hereinafter quoted from bill of exceptions in this cause (pages 248–249, printed Record) the rulings of the court below, and the declarations of plaintiff's counsel in the progress of the trial constituted an actual dismissal of said coupons from this suit, precluding their computation in the judgment herein.

Cross examination of plaintiff's witness, Mellen, by defendant's counsel (pages 248–249 printed Record)

"DEFENDANT'S COUNSEL: You testified some years ago in a deposition taken in this case at Keokuk by Mr. Hagerman?

"A. Yes, sir.

"Q. Didn't you testify then you had sold those first bonds?

"A. No, sir; I did not, and you can't find anything of the kind.

"Q. You said you had bought some in 1876, didn't you?

"A. I bought some in 1878.

"DEFENDANT'S COUNSEL: And they were 16, 17, 39, 40, and 56, were they not?

"PLAINTIFF'S COUNSEL: I object, because those bonds are not in this suit.

"DEFENDANT'S COUNSEL: How can we tell what is in this suit? They have dismissed $20,000 of coupons while we are trying the case, and we haven't had time to find what they have dismissed and what they have not.

"PLAINTIFF'S COUNSEL: We have furnished a list, put in the hands of one of the jurymen showing exactly the coupons and bonds in suit.

"DEFENDANT'S COUNSEL: I spent four hours last night trying to locate these coupons that were dismissed yesterday, and it is not just to us to compel us to take their knowledge in the matter.

"PLAINTIFF'S COUNSEL: We did not take judgment on those.

"DEFENDANT'S COUNSEL: Those coupons were in this suit at one time.

"THE COURT: They have all been dismissed, the counsel says.

"DEFENDANT'S COUNSEL: I don't know it; they say so.

"THE COURT: Hold them to their word; of course we will hold them to their statement.

"PLAINTIFF'S COUNSEL: Those are not in this suit of William Hill against Scotland county."

The testimony of plaintiff in his first deposition (page 4, supplement to printed Record) shows that the witness Mellen did from the outset own in this suit coupons from bonds 16, 17, and 56. The petition at page 3, printed Record, shows that they were declared upon. The "list of coupons remaining undismissed," at page 165, printed Record, is presumably the one which the juror held, and it shows that eleven coupons from said bonds were undismissed and computed in plaintiff's judgment. Defendant also relies upon the X assignment of error as additional support for the error herein assigned.

XV.

It is manifest from the Record in this cause, that the court below erred in permitting to be "transferred by memorandum to this case on October 12, 1885," and under the court's rulings afterwards merged in judgment, the twenty-three fourth maturing coupons, and the ten thirteenth maturing coupons described in list at printed Record, page 167.

1st. Because the printed Record in this cause, page 18, shows that as to seventeen of said coupons, viz., fourth maturing coupons from bonds numbered 63, 64, 65, 66, 67, 68, 69, 70, 190, 75, 189, 81, 188, 82, 97, 98, and 187, plaintiff, William Hill, dismissed his suit on the 20th of March, 1885, nearly seven months before the trial.

2d. Because it is manifest from the plaintiff's other list of coupons at page 165, that he computed six of said fourth maturing coupons, twice, namely those detached from bonds numbered 16, 17, 18, 100, 199, and 200, once in the said list at page 165, and again as in the list transferred to this case at page 167.

3d. It is manifest from the plaintiff's amended petition, at pages 3, 4, and 5 of printed Record, that he never declared upon or asked judgment for either of the ten thirteenth maturing coupons described in said list and merged in his judgment.

4th. It is manifest from the record in this cause, pages 46 and 47, and defendant's answer, page 14, that each of said twenty-three fourth maturing coupons, and each of said ten thirteenth maturing coupons were being sued for in the case of First National Bank *v.* Scotland county, which the Court, against defendant's objection and exception, ordered to be tried with this cause, together with another case of Mellen against Scotland county, page 20 of printed record.

XVI.

The court below erred upon the trial of this cause in refusing, contrary to defendant's request and exceptions (pages 359 and 360, printed Record), the following instruction or declaration of law to the jury:

The court declares the law to be as follows:

If the jury find from the evidence that the sixth maturing coupons from bonds numbered 12, 11, 38, 79, 78, 80, 88, 136, 135, 137, 10, 162, 161, 160, 179, 26, 25, 35, 36, 37, 27, 36, 42, 30, 40, 140, 46, 45, 44, 71, 56, 57, 139, 141, 138, 85, 104, 105, 103, 102, 101, 106, 159, 134, 158, 89, 133, 77, 84, 76, as described in the 7th, 8th, 9th, 10th, and 11th counts of defendants' answer were filed in the cases of William Hill against Scotland county, numbered 752, James B. Dodge against Scotland county, numbered 753, and C. H. Mellen against Scotland county, numbered 754, Manning *v.* Scotland county, numbered 755, and that said several coupons were computed and merged in the several judgments in said cases rendered in this court on the 25th of September, 1887, and that the records of this court show that said term of the United States Circuit Court for the Eastern District of Missouri, at which said judgments of September 25, 1877, were rendered terminated before April, 1878, then no order of this court made as shown by

plaintiff's evidence to have been entered in mandamus proceedings in said several causes on the 30th of April, 1878, authorized the withdrawal of said several coupons in said several cases or made it lawful for plaintiff in this cause to maintain an action upon either of said coupons; on the contrary, as to each of such coupons, the jury are instructed that plaintiff cannot recover a judgment herein.

XVII.

The court below erred in admitting in evidence, contrary to defendant's objections and exceptions (printed Record, pages 94, 95, 96, 97, 100, 101, 164, 167, 168), the 36 cancelled sixth maturing coupons purporting to have been detached from bonds numbered 10, 11, 12, 25, 26, 27, 35, 36, 37, 57, 84, 85, 88, 89, 93, 101, 102, 103, 104, 105, 106, 133, 134, 135, 136, 137, 138, 139, 140, 142, 158, 159, 160, 161, 162, 179. The printed Record, pages 94, 95, 96, 100, 101, shows that said coupons had been filed and cancelled in certain suits in the lower court, numbered 752, 753, 754, 755, that although, under stipulation, page 148, printed Record, the amended petition contained but a single count, the judgments in each case comprised all coupons on file including said sixth maturing coupons; that said judgments were not set aside, nor any orders therein made for withdrawal of said coupons, but that at a subsequent term of the court, in separate cases, wherein said plaintiffs, as relators in *ex parte* proceedings, sought peremptory writs of mandamus against the County Court of Scotland county, the record purported to show that leave had been given in that proceeding to withdraw the aforesaid sixth maturing coupons, page 96, printed Record, which had been at a previous term of said court (pages 117, 136, 151, 163, printed Record) merged in judgments in four several cases against Scotland county.

XVIII.

It is manifest from the Record herein that the court below erred in this, that after a jury of twelve men had been duly sworn to answer questions, had been examined by plaintiff and the entire twelve accepted, and after defendant had examined said twelve men and challenged one Souther, whose place was filled by another juror who was examined by plaintiff and accepted, and examined by defendant and accepted, thus completing the jury of twelve men required to try this cause, the court below, against the objections and exceptions of the defendant, ordered the case of Mellen *v.* Scotland County and First National Bank of Warsaw *v.* Scotland County, involving different parties, pleadings, and issues, to be consolidated with this case for the purpose of trial, and upon that ground authorized plaintiff's counsel to resume the right of challenge and permitted him peremptorily and without cause shown, to challenge three jurors from the jury of twelve men previously accepted to try this case. (Printed Record, pages 25, 61, 62.) The entire statute relied upon by plaintiff in error is set forth at page 46 of this brief.

XIX.

It is manifest from the record herein (pages 34 and 35 printed Record) that plaintiff's amended and consolidated petition does not state facts sufficient to constitute a cause of action against this defendant.

XX.

The court below erred upon the trial of this cause in refusing, contrary to defendant's request and exceptions (pages 359 and 360, printed Record), the following instruction or declaration of law to the jury:

The Court declares the law to be that even though the jury may find for the plaintiff upon any of the issues in this case made, it being conceded that the obligations sued on were not authorized by the assent of the majority of the tax-payers of said County of Scotland or by the assent of a majority of, or of two-thirds of, the qualified voters of said county, at any general or special election therein held, the sole authority for the issue of said bonds rests upon the 10th section of the act of General Assembly of the State of Missouri entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9, 1857, which section provides that said company should in all things be subject to the same *restrictions* and entitled to the same privileges, rights, and immunities which were granted to the North Missouri Railroad Company by an act entitled An act to incorporate the North Missouri Railroad Company, approved March 3, 1851, as far as the same were applicable to the company created by said act of February 9, 1857; said charter power did not authorize the levy of special taxes for the payment of county bonds, issued solely under said power. Said law conferring such authority to issue bonds, and the general laws in force in the State of Missouri, on the 9th of February, 1857, clearly manifest a legislative interest to limit the payment of such bonds to the general county fund, and such limitation must enter into any judgment which plaintiff may recover herein.

XXI.

It is manifest from the Record herein that the judgment exceeds the amount which plaintiff could lawfully recover in this cause under the charge of the Court to the jury.

Calculating interest at six per cent. upon every undismissed coupon named in the petition and in the list of undismissed coupons (page 164), allowing the 25 coupons from bonds 1, 2, 3, 4, 145, 146, and 147, which the printed Record, pages 168, 169, shows were not produced or proven, including the 11 coupons from bonds 16, 17, and 56 which plaintiff (page 249) substantially dismissed, the judgment should have been $43,679, instead of $46,944. This Court judicially notices that the law of Missouri then in force (General Statutes of Missouri, page 458, section 2,725) limited interest upon plaintiff's coupons (page 92, printed Record) to six per cent.

POINTS AND AUTHORITIES.

I.

The charge to the jury set forth in first assignment of error deprived defendant of the rightful application of the previous ruling in this Court concerning the judgment in case of Wagner *v.* Mety *et al.*; this Court in that case (Scotland County *v.* Hill, 112 U. S. 185,) said: "The decree was in accordance with the prayer of the bill and certainly concluded both Mety and the Railroad Company. It could not sue and recover upon the bonds because it had been directly adjudicated that the bonds were void and of no binding effect upon the county. But it is equally well settled that the decree binds not only Mety and the company but all who bought the bonds after the suit was begun and who were chargeable with notice of its pendency or the decree which was rendered.

"It is a matter of no importance whether the decision in the Wagner suit was in conflict with that of this Court in Scotland county *v.* Thomas, 94 U. S., 681, or not. The question here is not one of authority but of adjudication."

The court below, in the charge (page 361, printed Record) set forth in first assignment of error, page 14 of this brief, declares that it has gone "a step further than the ruling, which was specifically before the Supreme Court of the United States," and the entire charge (which at the outset isolated therefrom all the questions of law saved by defendant's several declarations of law) consists of eight iterations of one proposition, which is that the jury should find for plaintiff, unless actual notice of the pendency of the suit of Wagner *v.* Mety had been traced from the original delivery by Mety through all the various transferees of the paper (and the distinct intimation in one iteration that such notice had not been traced). The jury were not left to determine whether the conflicting statements of Kirk and plaintiff concerning the number of bonds purchased and the party who purchased them, were irreconcilable, or whether plaintiff's testimony, that he bought all said bonds (which Kirk swore he sold to the bank) individually from brokers who "were very careful not to let him know from whose hands they came" (page 16, plaintiff's 2d deposition), did not show that there were intermediate transfers after Kirk sold to the bank, or whether it was not evidence of the conspiracy to make mock sales pleaded by defendant. The court below substantially held that inasmuch as defendant could not trace actual notice through the unknown persons from whom Kirk swore they purchased without knowing when, or at what price, they bought, but only knowing that Tobey & Co. made money by the transaction, the jury must find for plaintiff. Hill swore that he bought knowing that the bonds were contested. It is true Kirk and Gaylord swore they sold to First National Bank, of which plaintiff was president, at 50 cents flat (or 25 per cent.) on the dollar, but plaintiff, in his first deposition (at page 5, supplement to printed Record) states: "I cannot

say what I paid for all the bonds. I bought them *with other* bonds, and usually counted them *worth* about 50 cents." Plaintiff's entire testimony was equally evasive and vague.

Under the rule of practice in Missouri, in order to use Hill's admissions, it was necessary that the entire depositions should be read by the defendant.

Hill *v.* Sturgeon, 28 M. R., 323.

But defendant was not thereby precluded from disproving, as was done in this case, by other evidence, the contradictory testimony of plaintiff.

Chandler *v.* Flumer, 50 M. R., 239.

Plaintiff himself distinctly stated that while he purchased all the bonds individually (page 5, 1st deposition), he could not state from whom he bought each bond. "The most of them have been bought of Gaylord and Tobey & Co., brokers, from Tobey & Co., 30 or 40 thousand." Kirk, of Tobey & Co., swore that he sold the First National Bank 61 of the bonds which plaintiff in that very first deposition (page 5) shows that he then held in his possession three years after he had bought them, knowing "where they were going when I bought them." Clearly here was an impossible task imposed upon defendant of tracing through persons from whom Kirk, of Tobey & Co., swore he purchased, although he could not give dates, names, and prices paid. How could defendant tell how those bonds got from the bank to Hill, when he could not or would not do so ten years ago. In Goodman *v.* Simonds, 20 How., 369, this Court (analyzing the previous decision of this Court and the later English decisions overruling the doctrine in Gill *v.* Cubitt) declared that the intention was to deny the benefit of the new rule to those who took in bad faith or knavery with actual notice, etc.

In Murray *v.* Lardner, 2 Wall., 121, the same rule is enunciated. "Guilty knowledge and wilful ignorance alike involve the result of bad faith, and established whether by direct or circumstantial evidence is fatal to the title of the holder." At page 122 the court adds: "While courts should be careful not to shape or apply the rule (concerning negotiable securities) as to invite aggression or give an easy triumph to fraud, we should not forget the considerations of equal importance which lie in the other direction." It would seem that if we apply the doctrine of the lower court in this case to the thief who stole Larner's bonds, it would enable him to pass the bonds through the hands of unknown persons to a broker who would be "very careful not to tell or remember the names of holders of the bonds," and then buy them from that broker at 25 per cent. of the total amount (Kirk and Gaylord's price for the coupons in this case), defy, as well as innocent Murray did, a replevin suit in behalf of the owner, and apply the bonds to defense against the criminal prosecution for stealing them. I am unwilling to concede such application of the rule to paper finally *executed*, as well as delivered to conspirators, *pendente lite*, because as shown in this case, the first 100 bonds bear upon their face the inscription, "Countersigned and delivered Sept. 20, 1871." The proof, pages 320, 322, 324, 346, 349 of printed Record shows pendency of suit of Wagner *v.* Mety, in which the conspirators with actual notice induced Mety to avoid process until after the first 100 bonds were executed and delivered, and

against which they guaranteed protection to him after service, when two months later he in like manner countersigned and delivered, Dec. 11, 1871, the remaining 100 bonds. (Pages 324, 89, printed Record.)

I know that language has been used in reports and text books which may carry the doctrine beyond the limitations fixed in Goodman *v.* Simonds and Murray *v.* Lardner, but it seems to me that in no instance have the facts of any reported case justified the use of the extreme language referred to.

In Murray *v.* Lardner, a broker of undisputed character bought in good faith two days before the loss of the bonds was known to the owner; four days before the public were informed thereof.

In Commissioners of Marion County *v.* Clark, the printed Record No. — p. 137, Oct. Term, 1876, U. S. Supreme Court, shows that there was no adjudication in the pending suit mentioned in the report, and that the object of said suit was not to enjoin the issue of the bonds.

Warren County *v.* Marcy, 97 U. S., 100, involved a plea of constructive notice and the injunction had been dissolved.

If it be true that the law has been so modified as to enable those against whom *mala fides* has been pleaded and proven, in this case, to shield themselves against an adjudication by forcing upon defendant the impossible task of proving actual notice to every transferee, it yet remains to be suggested that the most extreme advocates of the modern rule to prevent paralysis in the circulation of negotiable securities, concede that the payee in the bond is precluded from invoking such protection.

In this case the bonds were proven, upon the face thereof, to be payable to the Missouri, Iowa and Nebraska Railway Company, or bearer.

Henry Hill, who was a director and stockholder in said railway company (plaintiff's second deposition, page 10, supplement to printed Record), in this suit owned several thousand dollars of the coupons in plaintiff's judgment merged. (Page 4, Wm. Hill's first deposition, supplement to printed Record). In said deposition, we are informed that Henry Hill had in this suit coupons amounting to $3,860, from bonds numbered 5, 31, 76, 84, 89, 153, 134, 158, 159, 164, 165, 167. Turning to the petition, pages 3 and 5, we verify the fact, and turning to list of undismissed coupons, at pages 164–166, printed Record, we find that 27 of said coupons, amounting with interest to four or five thousand dollars, were merged in the judgment.

Against plaintiff as his avowed trustee, this seems a conclusive defense as to that portion of judgment represented by said coupons (pages 165, 166, 3–5, printed Record), which the court by its charge precluded the jury from considering.

Moreover there was evidence tending to show that the Iowa Contracting and Construction Company was the real payee; that the president of the construction company wrote and procured the subscription on the records of the original order of August 9, 1870, subscribing stock; that the same man, Drake, was the president of both companies; the same man, Henry Hill, superintendent and stockholder of both companies. Smith, who seems to have succeeded Drake as president of the construction company, "along in 1871," swore in two parts of his deposition that the bonds were received by *the construction company*

from Scotland county at their par value, and selling at 80 cents (pages 180, 181, printed record), and in a third speaks of taking them from the railway company. Plaintiff, and every person interested in this suit, except Dodge, was shown to have been a stockholder in the construction company. If the construction company was the actual payee, then the exception to the rule applicable as against Henry Hill's coupons if the railway company was the payee, would be extended so as to prevent the protection of any innocent holders as to three-fourths of the judgment. (Daniels on negotiable instruments, Sec. 805.)

If the $33,000 of coupons in this judgment which Hill bought for the conspirators from Tobey & Co., and as shown has ever since held in trust for parties named at page 4 of his first deposition, were purchased in good faith, instead of at a mock sale, we find yet one bond, number 75, and coupons therefrom, merged in judgment (pages 165, 25, printed Record), which Hill in a very guarded manner swears (p. 251) came from Tobey & Co., but which Tobey & Co. (p. 234) do not mention. Plaintiff endeavored to create the impression that 75 was 55 named in Kirk's deposition, but at page 63 it was shown that Hill actually owned coupons from bond 55 in this suit, and dismissed as to them after trial began; and at page 4 of his deposition, taken ten years ago, he swore he owned coupons from said bond number 55. Plaintiff was evidently wrong in his statements. If he had been right his evidence would have been as it is, valid only as to one point, that is, that he bought it from some holder, March, 1876; the result is proof that he bought from a transferee who has not sworn about the bond, and we have a case presented where the charge of the court took away the right of a defendant to require proof of a previous innocent holder of bond 75, by putting upon defendant the burden of proving another impossibility. Not only was plaintiff personally chargeable with fraud, but the adjudication in Wagner's suit, of which he had notice shown, that the bonds were issued *ultra vires* for two reasons, and that the delivery of both issues of bonds was in violation of an injuction which was made perpetual.

What has been said in support of this first assignment of error applies in a great measure to the second assignment of error concerning the same charge, and to the declarations of law refused by the court and set forth in the third and fourth assignments of error, which have been made by way of precaution, although it seems clear that the entire charge of the court was properly made the subject of the exception noted at page 362, printed Record.

II.

The order allowing seven per cent. interest on the judgment (page 25, printed Record) was unauthorized by law. Sec. 2725, page 458, vol. 1, Revised Statutes of Missouri, 1879, provides as follows:

"Interest shall be allowed on all money due upon any judgment or order of any court, from the day of rendering the same until satisfaction be made by payment, accord, or sale of property; all such judgments and orders for money upon contracts bearing more than six per cent. interest shall bear the same interest borne by such contracts, and

all other judgments and orders for money shall bear six per centum per annum, until satisfaction made as aforesaid."

The coupons merged in plaintiff's judgment were (page 92, printed Record), excepting dates and numbers, in words and figures as follows:

"RAILROAD BOND COUPON.

"$80. MEMPHIS, MO., *Sept.* 1, 1870.

"County of Scotland, State of Missouri, will pay to the bearer, on December 31, 187—, at the Farmers' Loan and Trust Company, in New York, eighty dollars, being one year's interest on bond No. —, for $1,000.

S. McDONALD,
"*County Clerk.*"

This Court in the case of Cromwell *v.* Sac County (96 U. S., page 62) distinctly declared that upon such an instrument the law of the State where judgment was rendered should be followed. In this instance the law conclusively fixed six per cent. as the rate. Motion in arrest of judgment (page 362, printed Record) called attention to the fact that that judgment was erroneous and excessive.

The same authority, 96 U. S., 62, is applicable to the error of the lower court (page 354, printed Record) ordering interest to be computed upon coupons aforesaid at rate of 7 per cent., making a difference in this judgment of $2,600, because the Revised Statutes of Missouri, 1879, Sec. 2723, page 458, provide:

"SECTION 1. Creditors shall be allowed to receive interest at the rate of six per cent. per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made, for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made."

III.

Plaintiff failed to establish the *factum* of the coupons sued on and of the bonds from which they were alleged to have been detached.

The case of Anthony *v.* Jasper County (101 U. S., 693) involved a township bond. This Court has in no case from Missouri passed upon a plea of *non est factum* involving county bonds purporting to have been issued under special charter power. Under the law of Missouri, in force when case of Thomas *v.* Scotland County was tried in 1874, the execution of an instrument sued on was taken as confessed if not denied by verified answer.

Revised Statutes of Missouri, 1865, page 676, Sec. 45: "When any petition or other pleading shall be founded upon any instrument in writing, charged to have been executed by the other party and not alleged therein to be lost or destroyed, the execution of such instrument shall be adjudged confessed, unless the party charged to have executed the same deny the execution thereof, by answer or replication, verified by affidavit."

Section 3654, page 622, Vol. 1, Revised Stat. of Missouri, 1879, dispensed with such verification upon the part of counties. "The preced-

ing section shall not be construed to authorize any instrument of writing to be received in evidence without proof of its execution, in any suit against an executor or administrator, or any other person representing the person charged to have executed such instrument, nor any county, city, or town, sued upon any instrument alleged to have been executed by such county, city, or town, or any corporate authorities." Defendant's answers to plaintiff's amended petition have for nearly ten years made said plea. The only question concerning the bonds in the agreed case of Thomas *v.* Scotland County was as to the authority (under the facts stipulated) of the County Court to subscribe stock to the Missouri, Iowa and Nebraska Railway Company, without the condition precedent of a two-thirds vote of the qualified voters of the county. It was agreed in that case that the Missouri, Iowa and Nebraska Railway was the legitimate successor of the Alexandria and Bloomfield Railroad Company. In this case it was not admitted; nor proven by plaintiff.

If plaintiff's pleadings were sufficient, he nevertheless failed to establish those absolutely essential facts which were pleaded and admitted in Thomas' case. 1st. That a part of the route of the Alexandria and Bloomfield Railroad Company may have been in or through Scotland County. Secondly, that the Alexandria and Bloomfield Railroad Company accepted the act of February 19, 1866, which provided that only such parts thereof as should be formally accepted in an order made by a majority of the directors of said company should become a law.

The *factum* by the County Court of the instrument sued on was confessed in the case of Thomas *v.* Scotland County (94 U. S., 681), there was not only no proof concerning the countersignature or delivery of bonds by trustee, but the form of the bond agreed upon in that case does not even show (94 U. S., page 683) that upon the face of said bonds there was an inscription showing that a trustee countersigned and delivered said bonds 12 or 15 months after the date there given. In that case, there being no verified answer, the execution of the bonds by the County Court—for the county—was confessed, and the bonds were receivable in evidence without proof of the *factum*, all questions as to authority which might have been made without a plea of *non est factum* were stipulated away or confessed in said case. In this case it was proven that two of the three justices of the County Court did not execute the bonds, but delegated by order, recited in the bonds, the making of a different form of bonds to one of their number, when the same might be prepared by the county attorney, and that said single justice signed a form prepared by plaintiff or alleged co-conspirators containing false recitals, unauthorized by the order of County Court which delegated to him and to the trustee only limited powers.

In Missouri the settled law at the date of the contracts herein was, that "a county is a *quasi* corporation or political division of the State, not a private corporation; that in so far as it *is a corporation it must act strictly within the limits of the powers conferred upon it by the act creating it.*"

Ray County *v.* Bently, 49 Mo. R., 236, 1872.
State *v.* St. Louis County, 34 Mo. R., 546, 1864.
Barton County *v.* Walser, 47 Mo. R., 202, 1871.

It is true that upon one occasion the supreme court of Missouri used language *arguendo* which has been elsewhere unjustly construed into a declaration that County Courts were general agents of the county, but, on the contrary, in a *subsequent* decision in the same volume, the same Court, through the same judge, declared: "The powers of the County Court and what precise relation it bears to the county we are to ascertain from the numerous acts which have been passed from time to time by the legislature conferring power upon it; it is *nowhere declared that the County Court is the general agent or representative of the county*—it is a part of the State government, with specific powers, duties and functions, generally local to the county, it is true, but derived from the State, and not from the county. It is true that it can bind the county in some contracts, subject it to some legal obligations, and appropriate its money to certain objects; but these powers it exercises by virtue of authority derived from the State government and in obedience to State laws."

Reardon *v.* St. Louis County, 36 Mo. R., 561, 1865.

The General Statutes of Mo., 1865, page 555, sec. 1, provided that "the County Court shall be composed of three members, to be styled the Justices of the County Court." Sec. 11, page 557, provided that "a majority of the Justices of the County Court shall constitute a quorum to do business," etc.

The General Statutes of Missouri, 1865, page 84, sec. 6, provided that "Words importing authority to three or more persons shall be construed as authority to a majority of such persons, unless otherwise declared in the law giving such authority."

As this Court said, in case of Comm'rs *v.* Clark, 94 U. S., at page 283, the law of the State must determine how the bonds of a county shall be executed, quoting the law of Kansas, 1872, sec. —, page 3, to show that in that State such "bonds, if issued by a county, shall be signed by the chairman of the Board of Commissioners and attested by the County Clerk."

The laws of Missouri make no special provision for execution of bonds, but provide in regard to all actions of County Courts as hereinbefore cited.

The bonds (page 88, printed Record), upon the face thereof, notified every purchaser that there was an order of the county, not merely subscribing the stock, but delegating to the presiding justice the authority to execute a bond which otherwise required the signatures of two members of the County Court. Every purchaser seems to have also been placed upon inquiry as to the authority of Charles Mety, the trustee of the county, who marked said bond upon the face as "countersigned and delivered Sept. 21, or Dec. 11, 1871." Turning to the records for authority for the delegation of power to one member of the Court, he was bound to notice that the language of said order (upon which also depended Mety's authority as trustee) merely provided for the execution by said single member of bonds to the Missouri, Iowa and Nebraska Railway Company in payment for stock subscribed to that company, and no other.

He was bound to notice that said order did not pretend that "said subscription was made by authority of the act incorporating the Alex-

andria and Bloomfield Railroad Company, Feb. 19, 1857," or that the Missouri, Iowa and Nebraska Railway Company was recognized as the successor by consolidation of two companies, one of which was "formerly the Alexandria and Bloomfield Railroad Company;" the false recitals inserted in the bonds which Henry Hill, or the First National Bank of Warsaw, printed in the bonds they sent to McDonald for execution, instead of those the County Attorney had been authorized by aforesaid order to prepare. It is contended that even the County Court could not under the circumstances have determined the accuracy of those recitals, and, secondly, that not having done so, nor delegated authority so to do, every buyer was bound to satisfy himself, in seeking authority for their execution, that the County Court had not delegated authority for the insertion of said false recitals.

Anthony *v.* Jasper County, 101 U. S., 603.
Chambers County *v.* Clews, 21 Wall., 324.
Merchants' Bank *v.* Bergen, 115 U. S., 391.
County of Dallas *v.* McKenzie, 94 U. S., 663.

Under plea of *non est factum* it was incumbent upon plaintiff in this case to show that part of the route of the Alexandria & Bloomfield Railroad Company may have been in Scotland county, because under the charter power of N. M. R.R. Co. (page 69 of printed Record) imported into the Alexandria & Bloomfield charter (page 65, printed Record) there was no power even in the County Court to insert said recitals without the existence of that condition precedent. The language of section 14, page 69, "It shall be lawful for the county court of any county in which any part of the route of said railroad may be to subscribe stock and issue bonds of such county," so clearly imposed that duty, that in Thomas *v.* Scotland County, and every bond case excepting this which I have known in Missouri, the petition set forth that averment and alleged the making of bonds (usually set forth in form) thereunder. The power was not given to every court of every county, and it would seem to be reasoning in a circle to permit, as the lower court did, the establishment of such power by recitals in the bonds, even if the lower court had made them. There is no inconsistency between this position and that taken in Thomas *v.* Scotland County, because there the existence of part of the route in Scotland county was admitted and the *factum* of the bonds confessed, and the succession of the Missouri, Iowa & Nebraska Railway Company under the amendatory act of 1866, authorizing the change of name of A. & B. R.R. Company, was conceded.

This brings us to the other failure in plaintiff's proof of the *factum*, or the authority therefor, viz: The want of proof of acceptance by the Alexandria & Bloomfield Railroad Company of the following act of the General Assembly of the State of Missouri (as demanded by defendant, pages 78, 71, printed Record):

"An act *to amend an act* entitled 'An act to incorporate the Alexandria & Bloomfield Railroad Company, approved February 9, 1857,' authorizing said company to change the incorporate name; also authorizing said company to extend said road from a point at or near Luray, in Clark county, Missouri, to Nebraska City, in Nebraska Territory, by

way of or near Rockport, in Atchison county, Missouri, and also authorizing said company to adopt all or any of the sections of this act, the same to be binding on said railroad company.

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. That the Alexandria and Bloomfield Railroad Company may change the corporate name of said company to that of the Alexandria and the Nebraska City Railroad.

§ 2. That said railroad company may extend said road from a point at or near Luray, in Clarke county, Missouri, to Nebraska City, in Nebraska Territory, on the most practicable and direct route by way of or near Rockport, in Atchison county, Missouri.

§ 3. That said company may consolidate said road or make any running arrangement with any railroad now constructed, or that may be hereafter constructed, in the State of Missouri, such as may be mutually agreed upon by the proper contracting parties connected with said railroad or roads.

§ 4. That the *whole of this act or any section thereof* as shall be adopted by the board of directors of the Alexandria and Bloomfield Railroad Company at any meeting of said board called for that purpose by the order of the board or a majority of said board, the secretary having given thirty days' previous notice in writing to each director, stating fully the object of said meeting, *shall be in force from and after its adoption.*

§ 5. This act to take effect and be in force from and after its passage.

Approved February 19, 1866.

Without that acceptance the privilege to subscribe and to issue bonds without a vote of the people, imported in the Alexandria and Bloomfield charter (pages 69, 65, printed Record), could not pass to the consolidated company, as it was stipulated it did in the agreed case of Thomas *v.* Scotland County (94 U. S., 681).

The decision of this court in Green County *v.* Conness (109 U. S., 106) becomes for the first time applicable to plaintiff's case, because upon the Record as made in this case he did not show a passage of the privilege to the Alexandria and Nebraska City Railroad Company, which, consolidating with the Iowa Southern (page 77, printed Record), became the Missouri, Iowa and Nebraska Railway Company, the recipient of the subscription (page 80, printed Record), in the only order made by the County Court of Scotland county therefor or for the execution of any bonds, which order (page 80, printed Record) plaintiff offered in attempting to prove the *factum* of the bonds.

In the case of Thomas *v.* Scotland County, the counsel for Thomas only asked and obtained the admission of the *first* section of that amendatory act of 1866, which permitted change of name of Alexandria and Bloomfield Railroad Company. In the case of Thomas *v.* Schuyler County (98 U. S., 174) the Record of said case in this Court shows what the report does not, viz., that it was confessed that *all* of the sections of said amendatory act of 1866 were accepted, and this explains the language of Mr. Justice Hunt at page 174, where he evidently quotes from Sec. 2 of the amendatory act herein referred to. "It was contended that having fixed the route by way of Upton (the

first location) the power was exhausted." *Without* considering *this general proprosition*, we are of the opinion that it does not govern the present case. *The legislature did amend the charter so as to authorize a location* extending entirely through Schuyler county. In this case we made no stipulation that the law referred to by Mr. Justice Hunt had been accepted; it shows on its face that it was not a law without such acceptance.

An examination of the briefs and printed records of those cases of Thomas *v.* Schuyler and Scotland Counties, No. 62, Oct. Term, 1878, and No. 190, Oct. Term, 1876, will afford convincing evidence that even upon the question of authority the decision of the Supreme Court of Missouri in case of Wagner *v.* Mety, 69 M. R., 150 (set forth in full at page 316 of printed Record in this case), was entirely consistent with the rulings of this court in those agreed cases of Schuyler and Scotland Counties against Thomas, and also with the agreed case (concerning taxes) of Scotland County *v.* M., I. & N. R.R. Co. (65 M. R., 136.) It seems clear that but for the aforesaid concessions made by counsel representing Schuyler county in the lower court the able efforts of Mr. McCrary might have obtained from this court the very ruling made by the Supreme Court of Missouri concerning the change of route, without a two-thirds vote of directors, which that court held invalidated the subscription and bonds, because in the Wagner case it was *not* admitted that the second section of said amendatory act of 1866, which authorized a change of route, had been accepted and made operative by the Alexandria and Bloomfield Railroad Company.

In 1851, under the restrictions and privileges of the North Missouri charter, the 14th section of which was a copy of the Pacific Railroad charter (laws of Mo., 1849, page 222; laws of Mo., 1851, page 483), a change in the route of any road could only be made by an act of the Legislature. Neither the charter of the North Missouri Railroad Company nor that of the Alexandria and Bloomfield Railroad Company contained any such provision, except by reference in sec. 12 of the latter to the general railroad law, making same part of charter. Whenever the terms of the general railroad law were not repugnant to the special charter power, the Supreme Court of Missouri, as early as 1856, recognized that the provisions should apply, whether made part of the charter or not. (Peters *v.* I. M. R.R. Co., 23 M. R., 107; Lackland *v.* N. M. R.R., 25 M. R., 515.)

The law (General Statutes of Mo., 1865, sec. 13, page 337; R. S. of Missouri, 1855, page 423, sec. 24) has always prohibited any change of route without the assent of two-thirds of the directors of the railroad company. Said section 13 reads as follows:

"The directors of any company under this chapter may, by a vote of two-thirds of their whole number, at any time change the road-bed or road-line, or any part thereof, for the purpose of shortening the line, so as to overcome natural objections thereto; but nothing in this section shall authorize said company to change the general route or terminus of said road or any part thereof."

Not only did the demurrer in Wagner *v.* Mety confess that there was *not* a vote of two-thirds of the directors, but also confessed an absence of compliance with all the conditions upon which even such a vote might legalize a change of line. (Printed Record, p. 301.)

The only cases in this Court wherein said amendatory act has been considered were those of Thomas *v.* Scotland County (94 U. S., 681) and Thomas *v.* Scotland County (98 U. S., 174), wherein the Record of this Court shows that it was confessed that the Alexandria and Bloomfield Railroad Company accepted it. Those cases between different parties plaintiff cannot be invoked as an estoppel in this case; there was no attempt to prove their relevance herein.

Cromwell *v.* Sac County, 94 U. S., 360.

Gould *v.* Evansville, 91 U. S., 526.

Reports of decisions of this Court upon facts herein stated are not evidence of those facts in other cases between different parties.

Mackay *v.* Easton, 19 Wall., 619.

The case of Smith *v.* Clark County (54 M. R., 58) did not involve this amendatory act of 1866, because the Record shows that in suit were coupons from bond issued to the Alexandria and Bloomfield Railroad Company two years before the passage of said amendatory act of 1866; that the bond purported on the face thereof to have been issued, not under the charter power, but under the general railroad law, and finally that said case is shown by the report to have been made up of stipulations, constituting it also an agreed case.

It is earnestly urged herein that, relieved from the effect of stipulations in cases referred to, defendant is entitled to a declaration from this Court that there was not only a failure to prove the *factum* of the bonds in the narrow sense of establishing their execution by authority of a majority of the County Court, but that there was a failure upon plaintiff's part to show a power in the County Court to subscribe stock or issue bonds to the *Missouri, Iowa and Nebraska Railway Company*, because, if the charter power was not proven, the Record herein shows that by the pleadings there was a confession of absence of the only other power under which any County Court in Missouri may subscribe stock or issue bonds to railways without a two-third vote of qualified voters. (Pages 14 and 344, printed Record; page 4 of statement.)

Dallas County *v.* McKenzie, 94 U. S. 663.

If acceptance of said law had been proven, or if it be held that, by reasoning in a circle, persons without authority could create an estoppel tantamount to authority, by inserting false recitals in a bond they had not power to make, it still remains to us to contend that, upon the face of said amendatory act of February 19, 1866 (page 70, printed Record), and page 39 of this argument, it was unconstitutional and void, because repugnant to the twenty-fifth section of Article IV of the constitution of Missouri of 1865.

"No act shall be revived or re-enacted by mere reference to the title thereof; nor shall any act be amended by providing that designated words thereof shall be struck out and others inserted in lieu thereof; but in every such case the act revived or re-enacted, or the act or part of act amended, shall be set forth and published at length as if it were an original act or provision."

General Statutes of Mo., 1865, page 31, construed in French *v.* Wood, 58 M. R., 66.

"The Supreme Court of Missouri, in French *v.* Woodward (58 M. R., 68), has not only held this provision of the Constitution to be *mandatory*, but declared a law invalid and *void* for a far less flagrant discrepancy than is made manifest in this case.

Foster *v.* Callaway Co., 93 U. S., 571.

Mok *v.* Detroit Bdg. Co., 30 Mich., 527.

The act did not purport to add new sections to an existing law. It did not purport to remedy defects in the existing law. It did purport to be amendatory, with a most peculiar delegation of authority to the directors to determine how much of the old law should be amended.

It will not do to contend that it was not, as stated in the title, an amendatory act, because the XXXIId Section, of Article IV, of the constitution of Missouri of 1865, provides that—

"No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title; but if any subject embraced in an act be not expressed in the title, such an act shall be void only as to so much thereof as is not so expressed."

Cooley's Con. Lim., 243.

Dixon Co. *v.* Field, 111 U. S., 83.

It has been erroneously intimated that the constitutionality of the aforesaid amendatory act of Feb. 19, 1866, was discussed by counsel and this Court, in the case of Scotland County *v.* Thomas, 94 U. S., 685. In that report and more fully in the printed Record of said case, No. 190, October term, 1876, of this Court, it is clearly shown that it was the general law of March 2, 1869 (Laws Mo., 1869, 74) authorizing consolidation of railroad companies, which was assailed in briefs of counsel who then represented Scotland county. It is true that the 3d section of amendatory act of 1866 authorized consolidation of said Railroad Company with others, but page 226 of the printed Record in said case No. 190 shows that Thomas only pleaded and obtained admission that the *first* section of said amendatory act had been accepted and made a law by reason of such acceptance.

The foregoing points concerning power and *factum* applies to assignments of error numbered V, VI, VII, VIII, IX, X.

IV.

In support of the 9th assignment of error (generally covered by the authorities cited in the next preceding point) it should be further noted that it is evident that the error of the court below in admitting, out of the proper order (pages 92, 89, 86, 87, 164, 165, 248, 249), the several coupons offered by plaintiff against defendant's several demands, objections, and exceptions, directly led to the violation of defendant's rights by the incorporation in plaintiff's judgment of said coupons, many of which had really been dismissed (pages 63, 24, 18, 249, printed Record) and others offered (viz: 27 coupons from bonds Nos. 1, 2, 3, 86, 145, 146, 147, 164) without proving the *factum* of the bonds, as demanded by defendant (pages 86, 89, 167, printed Record), and that under said assignment of error defendant may be entitled to redress here for the wrongs further shown in assignments of error XV and XVI.

V.

If Sec. 914, R. S. U. S., 1878, requiring Federal courts to conform to State practice in trials, controlled the lower court, the consolidation of the cases of Mellen and the First National Bank with this case for trial after a jury had been sworn to answer questions and twelve jurors examined and accepted by plaintiff, one juror challenged by defendant, his place supplied, and said juror accepted by both parties, completing the jury, and making said consolidation the occasion to permit plaintiff to challenge three of said jurors peremptorily and without cause shown, was an error, greatly detrimental to defendant. The statute law of Missouri (Revised Statutes of Missouri, Vol. 1, page 469, Sec. 2795) is as follows: "In the trial of civil causes, each party shall be entitled to challenge peremptorily three jurors; but when there are several plaintiffs and defendants, they shall join in their challenges, and the plaintiff shall in all cases announce his challenges first."

There is no power under the laws of Missouri to consolidate cases between different plaintiffs and the same defendant for trial. Sec. 3656, page 623, Revised Statutes of Missouri, provides only for consolidation of cases where the plaintiff and defendants are the same, or there are several suits in the name of one plaintiff against several defendants. It is contended that the court below (at page 62, printed Record) practically disproved the correctness of its assumption that the cases might fairly be tried together by suggesting and permitting the right of challenge, without cause, to plaintiff, concerning a jury which he had already accepted for the trial of plaintiff's case, before consolidation was ordered.

The plaintiff's pleadings (pages 26, 46, printed Record) in the cases of Mellen and First National Bank carefully state all the causes of action omitted in the petition in this case. (Pages 3–5, printed Record.) Each of these (pages 27, 29, 47) involved many, 12th, 13th, 14th, maturing coupons never declared upon in plaintiff's petitions in this cause, and evidently required different defenses. To charge the same jury (page 360, printed Record) at the same time in three different cases with such widely different petitions added to the wrong begun with the consolidation.

VI.

Plaintiff's amended petition (page 3, printed Record) like those which preceded it (pages 2 and 114, printed Record in case No. 32, Oct. Term, 1884, U. S. Supreme Court, Scotland County *v.* Wm. Hill) did not state facts sufficient to constitute a cause of action, because being against a *quasi* corporation, whose functions were necessarily performed by limited agents, it did not allege that such officers executed the instruments in the manner provided by statute; it did not set out the form of the bonds from which the coupons were detached; it did not aver that the coupons were for interest on said bonds. The mere fact that the ordinary signification of coupon is well understood did not dispense with a more formal statement in a pleading. The petition

does not aver that the bonds were under seal; it does not aver that anybody made the coupons. The petition does not plead the special authority or manner whereby the county might have been empowered to execute them. To say that the bonds were issued under authority of law is insufficient. (Hooper *v.* Covington, 118 U. S., 150.) It is true that in this instance the petition shows that one objection noted in Mr. Justice Gray's opinion is avoided, but it is submitted that under the General Laws of Missouri, an averment in regard to subscription of stock which would be good as against a town or city is insufficient as against a *quasi* corporation like a county, which by long settled adjudication may only issue two classes of bonds to railroad companies; one class which may not bear more than *seven* per cent. interest (plaintiff's bonds bear *eight* per cent.), as authorized by the following sections of General R.R. Law.

Sec. 17, of chapter 63, General Statutes of Mo., 1865, p. 348. "It shall be lawful for the county court of any county to take stock for such county, etc., in, *or to loan the credit* thereof, to any railroad company, *duly authorized* under this or any other law, provided that two-thirds of the qualified voters of such county, etc., at a regular or special election to be held therein, shall assent to such subscription."

Sec. 18, G. S. of Mo., 1865, page 338: Upon the making of such subscription by any county court or city, *as provided for in the previous section, such county or city shall thereupon become, like other subscribers to such stock, entitled to the privileges granted and subject to the liabilities imposed by this act.*

G. S. Mo., 1865, sec. 20, 339: Any county or city subscribing as aforesaid may (if so required by the railroad company to raise funds to pay the installments in anticipation of the collection and payment of its railroad tax) issue bonds of such city or county, of denominations not exceeding one thousand dollars, and bearing interest at a rate not exceeding *seven* per cent. per annum.

Interpreting these sections, 17, 18, and 20, which were known as sections 30, 31, and 33 of the Revised Statutes of Missouri, 1855, vol. 1, p. 427, the Supreme Court of Missouri, in Beattie *v.* Andrew County (56 M. R., 42), declared that under the general railroad law no bond bearing more than *seven* per cent. was authorized.

Suing upon a bond bearing not more than *seven* per cent., plaintiff might make such an averment as that objected to in this case, and with other suitable averments herein wanting, to wit: That the *County Court*, not the county, made the subscription and executed the bonds under seal, would have forced upon defendant the duty of pleading the failure to hold an election, etc.

While any county may issue under this general law a *seven* per cent. bond, if the bond bears more than *seven* per cent. it can only be issued for subscription of stock or bonds issued to raise funds to pay such subscription under special charter *powers*, nearly all like that invoked by plaintiff (page 69, printed Record):

"It shall *be lawful for the county court of any county*, in which *any part of the route of said railroad may be*, to subscribe to the stock of said company, and it may invest its funds in the stock of said company, and issue the bonds of *such* county to raise funds to pay the stock thus

subscribed, and to *take proper measures* to protect the interest and *credit of the county.*"

Under such a *special charter power*, the Supreme Court of Missouri (Beattie *v.* Andrew County, 56 M. R., 42) held that bonds may be issued bearing any interest not exceeding ten per cent., because no limitation as to interest is contained in the special charter as in the general railroad law.

Plaintiff's petition did not allege that any part of the route of the Alexandria & Bloomfield Railroad was or may be in Scotland county; he did not set out the bond by whose false recitals he attempted to establish said fact upon this trial; he did not allege that the Missouri, Iowa & Nebraska Railway Company was the legitimate successor of the Alexandria & Bloomfield Railroad Company, or plead that the last-named company ever accepted and made a law of the amendatory act authorizing a change of name to that of the "Alexandria & Nebraska City Railroad," or that the "Alexandria & Nebraska City Railroad" was the Alexandria & Nebraska City Railroad Company (because it should be noted that the corporate name authorized by the amendatory act did not include the word "company"), or that it was formed by the consolidation of said company with another.

Defendant, knowing that the lower court had decided said pleading sufficient, dared not risk its case upon the defect, but endeavored to so frame the answer to the second count thereof so as to preserve the issue as shown in the statement.

In no part of said answer is there any averment that the route of the Alexandria and Bloomfield R.R. Co. was not in Scotland county; it is only alleged that no part of the route of the *Missouri, Iowa and Nebraska Railroad* was in or through said county. Plaintiff did not offer any proof of said essential fact that the A. & B. R.R. route may have been in Scotland county.

But it is submitted that if he had done so, they would have been inadmissible except as to the single coupon declared upon in his first count, and there only because, not by petition, but in reply to answer the first count of his petition, he had made said averment.

Under the laws of Missouri, Revised Statutes, 1879, Sec. 3519, page 603, it is declared that failure to make objection by demurrer or answer does not waive defendant's rights as against a petition which does not state facts sufficient to constitute a cause of action, and that, among other grounds, was assigned in defendant's motion in arrest of judgment in the court below. (Printed Record, page 362.)

VII.

Of the XVI and XVII assignments of error it may be said that the bill of exceptions (page 94–95, printed Record), shows that during the progress of the trial plaintiff caused the clerk, without notice to defendant and without any order of the court, to file a memorandum trasferring to this case 37 6th maturing coupons (described in said assignment of error, and also in the printed Record, at pages 168–169), which eight years before had been filed and cancelled in cases Nos. 752, 753, 754, and 755, wherein plaintiff, Dodge Mellen, and Manning had

had obtained judgments (printed Record, 117, 136, 151, 163). Said coupons were the subject of contest in four defences of defendant's answer (pages 11 and 12 printed Record), which plaintiff by reply had generally denied. Those defences had for six months warned plaintiff of the issue made, but not until the trial was in progress did he attempt the novel process of transferring by memorandum coupons cancelled in other cases. It seems that, in 1879, counsel, who then represented Scotland county, agreed that the plaintiffs in said cases might amend the first count of their petition and that same should be taken as amendments to the rest (page 148, printed Record), inasmuch as the original petitions declared on 3d, 4th, and 5th maturing coupons, it seems reasonable that the object of the amendment was to put in the 6th coupon (just as is shown to have been stipulated by Mr. Johnson in this case concerning 8th maturing coupons,) but the amended petition as filed merely declared upon one coupon for eighty dollars; such a petition taken alone evidently conferred no jurisdiction to render any judgment, yet the court rendered judgment Sept. 25, 1877, exceeding in each of three of said cases five thousand dollars (pages 117, 136, 151, printed Record), which by actual computation in each of the four cases shows that such judgment included all the 6th maturing coupons as well as other coupons named in lists (at page 163, printed Record). After the term had expired, on the 30th of April, 1878, the record of the court (page 96, printed Record) showed that in a mandamus proceeding against the County Court (only part of the record of which has been sent up) the relator therein undertook to enter a remittitur for enough of said judgments to reduce the same below five thousand dollars in every case, and that the court in *that proceeding* gave relator leave to withdraw sixth maturing coupon which the order concedes was merged in judgment, and for the remittitur concerning which no excuse whatever is made. On the trial the court heard against defendant's demand for record evidence only the statement of Mr. Hughes as to his recollections, which were quite contradictory to Mr. Johnson's statements (page 97, printed Record) to his successor, and which, at page 100, printed Record, shows that the conflict of recollection concerning the matter began before any remittitur was made; that the lower court *then* held that it could not take recollections of counsel.

Notwithstanding defendant's objection that if the court properly refused to take defendant's counsel's recollections at the time, it ought not to take the recollections of plaintiff's counsel seven years later as to something the record did not show, the court, contrary to defendant's exception (page 101 printed Record), admitted the cancelled coupons.

It is submitted that the jury should have been permitted to determine from the record evidence whether or not the said coupons had been merged in the judgments rendered in cases wherein said coupons had been filed and cancelled, as confessed in the remittitur and leave of withdrawal in a different case (because such a mandamus proceeding, though ancillary to the original case, involves different parties, and is not against the original defendant at all, but against the County Court, who, as shown in Reardon *v.* St. Louis County (36 M. R., 555), are not the general or unlimited agents of the county, but act as State officers

in obedience to State laws). But if this *ex parte* remittitur and leave of withdrawal had been made in each of the original cases, it would have been unlawful after the expiration of the term, September term, 1877, at which the records hereinbefore recited show the judgments against the county to have been rendered.

When a remittitur is entered the judgment must be set aside. Especially is this requisite when coupons merged in the judgment are to be withdrawn.

Bronson *v.* Schulter, 104 U. S., 410.
Noonan *v.* Bradley, 12 Wall., 121.
Harbor *v.* P. R.R., 32 M. R., 432.

Sec. 3655, R. S. Mo., 1879, page 622, provides: "When any petition, or other pleading, shall be founded upon any instrument of writing charged to have been executed by the other party, or his testator or intestate, or other person represented by such party, and not therein alleged to be lost or destroyed, the same shall be filed with such petition or other pleading." What has been said herein also applies to the seventeenth assignment of error, permitting the introduction of said coupons in evidence.

The exception to admission of coupons (page 92, printed Record) also covers this alleged error of the court below in admitting said cancelled coupons. The stipulation made in this case by Mr. Johnson (page 85, printed Record) that plaintiff might have until Feb'y 14, 1879, to file amended petition, and put in additional coupons, evidently referred to eighth maturing coupons first thereafter declared upon. It certainly did not refer to these cancelled sixth maturing coupons then on file in cases 752, 753, 754, and 755, because the plaintiff in this case had already, in his original petition filed August, 1878, declared upon said coupons. (See pages 133 to 141, printed Record, No. 32, October term, 1884, U. S. Supreme Court, Scotland County *v.* Wm. Hill.)

VIII.

The printed Record, pages 63 and 24, shows that plaintiff, after the jury had been impanelled and sworn to try the issues joined herein, was permitted to dismiss "without prejudice" many coupons all declared upon in the second count of his amended and consolidated petition (pages 3, 4 and 5, printed Record). It was contended by defendant in court below that the effect of such a dismissal was to dismiss the entire case, because while it is conceded that a plaintiff may dismiss as to any particular count of his petition, it has never been held that part of a count could be dismissed. If the dismissal of these coupons imposed the obligation to dismiss as to all the 555 coupons declared upon in said second count, it would have been tantamount to a dismissal of the entire case because the first count declared upon one coupon for eighty dollars, too small a sum to give jurisdiction to the court.

We feel that for this error, if other errors assigned be unsustained, we should have a new trial in this cause.

The only power granted by the laws of Missouri is found in Sec. 3555, Revised Statutes of Missouri, 1879, page 607: "The plaintiff shall be

allowed to dismiss his suit or take a non-suit at any time before the same is finally submitted to the jury," etc.

The other assignments of error, concerning mistakes in computation of dismissed or transferred coupons in judgment merged, seem so just as to entitle us to hope that they will not be contested.

IX.

The 12th section of the act incorporating the Alexandria & Bloomfield Railroad Company, now, for the first time, submitted for the consideration of any court, made all of the general railroad law (excepting sections 9 and 10, which merely related to liability of stockholder and increase of capital stock) part of said charter. Only one other charter in Missouri contained such a provision, it was construed in 1868. The settled law in Missouri at the date of the contracts herein, and at the present, was, and is, that said incorporation of the general railroad law not only precluded the issue of bonds bearing more than *seven* per cent., but so modified the previous sections of charter as to make an election a condition precedent to the issue of the bonds.

On the 3d day of March, 1851 (L. M., 1851, p. 23), the General Assembly of the State of Missouri, by an act entitled "An act to incorporate the North Missouri Railroad Company," declared by Sec. 14 of said act:

"It shall be lawful for the county court of any county, in which any part of the route of said railroad may be, to subscribe to the stock of said company, and it may invest its funds in the stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper measures to protect the interest and credit of the county. Such county court *may* appoint an agent to represent the county." &c. "May" means "shall" in a power given to public officers (L. & D. R.R. Co. v. Co. Court, 42 M. R., 169).

Sixty-four years ago there was printed in the general statutes of the State of Missouri a law entitled, "An act to enable counties to make contracts," which law has ever since remained in force, and is the only authority under which a county of Missouri may now sue or be sued.

Section 5 provides that the county court may appoint an agent to make any contract on behalf of such county for erecting any county building or *for any other purpose authorized by law*, and the contract of such *agent duly executed* on behalf of such county shall bind *such county*.

R. S. Mo., 1855, p. 502, Sec. 5.

R. S. 1865, Sec. 3, Ch. 37, p. 225.

On the 9th day of February, 1857 (L. M., 1856–7, pp. 95, 96), the General Assembly of the State of Missouri, by an act incorporating the A. & B. R.R. Co., and taking effect on said day, provided by Section 10 thereof:

"Said company shall in all things be subject to the *same restrictions*, and entitled to all the privileges, rights and immunities which were granted to the North Missouri Railroad Company, by an act entitled 'An act to incorporate the North Missouri Railroad Company, approved March 3, 1851,' so far as the same are applicable to the company hereby

created, as fully and completely as if the same were hereby re-enacted."

Section 12 of said act provided:

"The stockholders of said company shall be and are hereby exempted from the effect of sections nine and ten of the act to authorize the formation of railroad associations to regulate the same, approved December 13, 1855." Said sections 9 and 10 merely referred to double liability of stockholders, and to increase of capital stock.

The existence of this section has never before been suggested in any case.

In 1851, when the charter of the North Missouri Railroad Company was granted, there was no general railroad law. In each of the cases wherein bonds issued under special charter power have been held valid without the condition precedent of an election, there has been a charter containing language similar or identical with section 14 of the North Missouri charter, and an utter absence of words showing that the general railroad law should apply. Because of the absence of such apt words have these powers been held to rise above the restrictions of the general railroad law. Certainly apt words were used in the 12th section of the Alexandria & Bloomfield charter.

The only similar case ever passed upon by the Supreme Court of Missouri was that of Leavenworth & Des Moines Railroad Co. *v.* Platte Co. (42 M. R., 169, Jan'y term, 1868). The charter in that case involved (Laws of Mo., 1859-60, p. 443) contained, in sec. 6, a literal copy of sec. 14 of the charter of the North Missouri Railroad Co., as set forth at p. 11 of statement. After granting unrestricted power to county courts to subscribe and issue bonds, the eighth section proceeded, as in the charter of the Alexandria & Bloomfield Railroad Company, to make the general railroad law applicable. The court, without a dissenting voice, declared that the sixth section was modified and controlled by the eighth section, and that, although there was power under the sixth section, standing alone, to make subscriptions and issue bonds without the condition precedent of a vote, the subsequent section made the restrictions of the general railroad law applicable, and a vote was necessary. This decision was made after the case of State *v.* Macon County Court, (41 M. R.,) and was declared not to be in conflict with it.

In citing Smith *v.* Clark County (54 M. R., 62) courts have sometimes overlooked the fact that the bonds in that case *actually recited that they were issued under the general railroad law of* 1855 (54 M. R., p. 62), and bore 7 per cent. interest, and that court held under the law, as settled in January, 1865, the recital estopped the county, as against an innocent holder, but that after 1870 the contrary was the settled law of Missouri. Moreover, that agreed case, page 65, shows that section 12 of this charter, making general railroad law applicable, was not submitted for the consideration of the court, and that it was admitted that the bonds were issued under the special charter power in 1864, before the taking effect of the constitution and revised statutes of 1865. That court, upon motion for rehearing, at page 80, distinctly declared that there was nothing in the opinion which intimated that power to county courts, in special charters, were privileges which might not have been repealed or modified, either under the State constitution of 1865 or that of 1820.

If the decision in the agreed case of Scotland County *v.* Thomas (94 U. S., 681) precludes us from now contending that section 30 of the general railroad law of 1855, revised as section 17 of chapter 63, General Statutes of Mo., 1865, p. 348, "It shall be lawful for the County Court of any county to take stock for such county, etc., in, *or to loan the credit* thereof to any railroad company, *duly organized* under this or any other law, provided that two-thirds of the qualified voters of such county, etc., at a regular or special election to be held therein, shall assent to such subscription," became part of the Alexandria and Bloomfield charter, it does not prevent us from maintaining that sections 33 and 34 of the general railroad law of 1855 became part of said charter.

SEC. 33. (R. S. Mo., 1855, p. 427. G. S. Mo., 1865, sec. 20.) Any county subscribing for railroad stock may (if so required by the railroad company to raise funds to pay the installments in anticipation of the collection and payment of its railroad tax) issue the bonds of such city or county, of denominations not exceeding one thousand dollars, and bearing interest at a rate not exceeding *seven* per cent. per annum.

The Supreme Court of Missouri has, without conflicting decisions, declared that sec. 33 limits interest on all bonds issued under the general railroad law to seven per cent. per annum, but that only in a special charter power, wherein *no reference was made to the general railroad law*, a higher rate of interest was lawful. (Beattie *v.* Andrew Co., 56 M. R., 42.) The Record herein shows failure to hold election of qualified voters (printed Record, p. 344), and that in the injunction suit, of which plaintiff and all other holders of bonds and coupons had actual notice, such omission to hold election was confessed by demurrer.

An eight per cent. bond under such limitation was not only *ultra vires*, but *usurious*.

X.

If the power to create the obligations sued on was to be found only in the 10th section of the act incorporating the Alexandria & Bloomfield Railroad Company, which provided that said company should in all things be subject to the same restrictions and entitled to the same privileges which were granted to the North Missouri Railroad Company in 1851, there was no authority in the County Court of Scotland county to levy special taxes to pay bonds issued solely under such power. The law conferring the authority and the general laws in force on the 9th of February, 1857, clearly manifest a legislative intention to limit the payment of such bonds to the general county fund, and such limitation (printed Record) should have entered in the judgment in this case.

Plaintiff in error is bound to concede that it is the settled law of this Court that a power like that contained in the fourteenth section of the charter of the North Missouri Railroad Company (page 69), standing alone and unmodified by correlative provisions, authorized the issue of bonds without a vote of the qualified voters, and that it is also the settled law of this Court that the power to create such a debt implies the obligation to levy taxes sufficient to pay same, "unless, in the charter, or in some contemporaneous general law, a contrary legislative intention was shown."

When the North Missouri Railroad Company was incorporated, in 1851, there was no general railroad law. The first attempt to enact a general railroad law was made in 1853, which was succeeded by that of Dec. 13, 1855, referred to in section 12 of the Alexandria & Bloomfield charter. It is part of the history of the State, confirmed by numerous laws upon its statute books, that every county subscription to the North Missouri Railroad Company, prior to the adoption of the general railroad law, was paid either in cash or by bonds bearing six per cent. annual interest, a greater rate of interest being then usurious. (Laws of 1847, page 63.) Said subscriptions were undoubtedly made without a vote of the people. It was soon found difficult to pay same out of the surplus funds of the county; thereupon, from time to time, acts were passed authorizing particular counties to levy special taxes to pay said bonds. In the general railroad law, revised for the last time in 1855, and therefore inapplicable to any subscription made after said date (R. S. Mo., 1865, page 883), a provision was inserted in the Laws of Missouri, Sec. 34, R. S. of Mo., 1855, page 427, as follows: "Any county court or city which has *heretofore* subscribed to the capital stock of any railroad in this State shall be entitled to the privileges and subject to the liabilities of other stockholders in such company, and the County Court or city council *shall have all the rights and powers* to provide funds to pay *such subscription* as are granted to county courts and cities by this act, and may levy a *special tax to pay the interest on their bonds*, or to provide a sinking fund to pay the principal."

It was so well understood that there was no power for special taxation to pay bonds issued to the North Missouri R.R. Co., outside of the 34th section of the general railroad law, which, using the word "heretofore," could not be applied to bonds issued a year after its revision in 1855, that we find—

On the 9th day of February, 1857, *the same day* that the charter of the Alexandria and Bloomfield Railroad was enacted, the legislature added to the general railroad law the following amendment, constituting contemporaneous interpretation of the effect of the North Missouri charter incorporated in the aforesaid Alexandria & Bloomfield charter by the aforesaid section 10 (Laws of Mo., 1857, p. 161):

An act to amend an act entitled "An act to authorize the formation of railroad associations, and to regulate the same."

§ 1. That the bonds of the County of St. Louis, issued by the County Court of said county to the North Missouri Railroad and the St. Louis & Iron Mountain Railroad Companies, respectively, of seven hundred and fifty thousand dollars to the North Missouri Railroad Company, and of five hundred thousand to the Iron Mountain Railroad Company, upon the application of said railroad companies, made to the County Court on the 8th of October, 1856, shall be distributed so as to be due and payable equally through five years, beginning with the year 1860; and said County Court is hereby empowered and required to levy a special tax upon the whole of said county, including the city of St. Louis, to pay said bonds as they fall due, which tax shall begin in the year 1860, provided said tax shall be levied in like manner and subject to all the provisions and exemptions of the act to which this is amendatory.

This amendment manifestly formed a part of the general railroad law and of the Alexandria & Bloomfield charter by Sec. 12 of said act, and is valuable as affecting all concerned with notice that under the privileges and restrictions of the North Missouri charter of 1851, which was enacted two years before the first general railroad law of 1853, there was no power to levy special taxes to pay bonds issued in 1856, in pursuance of Sec. 14 of said charter. If the holder of Scotland county bonds relies upon the power granted by the North Missouri charter, it would seem he thus has actual notice that he can only look to the surplus of the general county fund. In 1851, it was usurious to make any bond bearing more than six per cent interest annually. That was one of the restrictions of the charter of the North Missouri charter in 1851. If he claims that Sec. 12 of the Alexandria & Bloomfield charter, now, for the first time, brought to the attention of any court, made the general railroad law part of this charter of the Alexandria & Bloomfield Railroad Company, the provisions of that general law present limitations and restrictions inconsistent with the judgment rendered herein.

That general law, whenever thus made part of a charter, as authoritatively interpreted by the Supreme Court of Missouri at *the date of the contracts* herein and at the present time, modified the previous section granting power to subscribe, made an election of qualified voters a condition precedent to issue of bonds, precluded the issue of bonds bearing more than seven per cent annual interest, and provided that the persons who ultimately paid taxes to redeem said bonds, and not the county, should receive and own the stock in payment of which said debt was to be created.

HENRY A. CUNNINGHAM,
Attorney for Scotland County, Plaintiff in Error.

IN THE

Supreme Court of the United States.

October Term, 1888.

THE COUNTY OF SCOTLAND,
PLAINTIFF IN ERROR,

v.

WILLIAM HILL,
DEFENDANT IN ERROR.

No. 255.

Supplemental Brief of Plaintiff in Error, in reply to Brief of Defendant in Error.

In addition to what has been said at pages 51 and 52 of first brief in support of assignment of error number XX, I beg the Court's consideration of the case of Ridings *v.* Hall *et al.* (48 M. R., 105.) That decision, made in March, 1871 (six months before the first hundred bonds herein involved were upon the face thereof marked, countersigned, and delivered Sept. 20, 1871, by Mety, the trustee of Scotland county), demonstrates that the law of Missouri, as interpreted by the highest court at the date of issue of bonds, was that they were *not* payable by special taxation or otherwise than out of funds in the treasury of the county pertaining to the general fund of the county. The decision clearly shows that it was only possible in that case to apply the provisions of the 33d section of general railroad law of 1853 (Laws of Mo., 1853, page 121), revised as section 34, R. S. of Mo., 1855, page 429, and continued as section 22, G. S. of Mo., 1865, 339, because the bonds of Johnson county were issued in payment of stock subscribed by said county in 1851 to the Pacific R.R. Co. under the 14th section of its charter, which read as follows:

"SEC. 14. It shall be lawful for the *County Court of any county in which* any part of the route of said railroad may be, *to subscribe to the stock of said company;* and it may invest its funds in the stock of said

company, and issue the bonds of said county to *raise funds to pay the stock thus subscribed*, and to take proper steps to protect the interest and credit of the county. Such County Court may appoint an agent to *represent the county*, vote for it and receive its dividends," &c.

Laws of Mo., 1849, 222.

From that charter was copied the 14th section of the N. M. R.R. charter of 1851 (page 69 printed Record); in fact the entire twenty sections of the Pacific charter, were repeated in the N. M. R.R. charter, with change of names, &c.

Considering this charter power with reference to the section of the general railroad law of 1853 (page — of this brief), which gave the payee the stock, the supreme court of Missouri said in said case of Ridings *v.* Hall: "So far as this particular act is concerned it is in this section (the 33d section of general railroad law of 1853 known as 34th section of general railroad law of 1855 and section 21 of general railroad law of 1865) that the *authority is found* for levying a *special* tax to meet the liabilities incurred by past subscriptions; the whole section relates to county liabilities incurred *prior* to the passage of the act and embraces the subscription made to Johnson county in 1851." The court then declares that while said section 33 is retrospective the remaining sections of said law thereafter cited (at page —) were manifestly prospective, and therefore Ridings could not get the stock representing his share of special tax.

Sec. 1, Ch. 9, General Statutes of Missouri, 1865, page 83, declares that whenever the word "heretofore" occurs in any statute it shall be construed to mean any time previous to the day when such statute shall take effect. Therefore the word "heretofore" meant prior to the taking effect of the 33d section of the railroad law of 1853, revised as section 34 of the R. S. 1855, page 429.

Said section 34 was not altered or amended by the revision of 1865 (G. S. Mo., 1865, 339, sec. 21). Sections remaining unchanged were "to be construed as continuations of the law of 1855, and not as new enactments" (G. S. Mo., 1865, 882, 883, secs. 2 & 5.)

St. Louis *v.* Alexander, 23 M. R., 483.

St. Louis *v.* Foster, 52 M. R., 513.

The revision of 1865 only altered three sections of the general railroad law of 1865, viz: sec. 30, concerning condition precedent of election revised and materially altered as sec. 17. Sec. 31, altered but not materially, concerning levy of special tax, revised as section 18, and 35 concerning mandamus, revised as section 22 by substituting the words circuit court for "criminal court." So that according to the rules of construction fixed by law the 34th section only applied to subscriptions of stock and bonds issued therefor prior to 1855. Judge Dillon thought it related to subscriptions prior to 1865 (5 Dill., 202), but if he was right it could not authorize special taxation in this case for stock subscribed in 1870, or bonds issued in payment thereof in 1871.

Every buyer, whether innocent or otherwise, was bound to know this interpretation of the law, and also the legislative interpretation of

the North Missouri charter itself (page 51 of first brief of plaintiff in error), which entered into the Alexandria and Bloomfield charter on the day of its enactment.

This point and that which preceded it involve several local statutes with which I hesitated to encumber my brief, but their importance is such that I feel constrained to include them in this supplement. No other charter in Missouri has involved so many peculiar provisions. The charter of the North Missouri Company, whose restrictions as well as privileges were imported into the Alexandria and Bloomfield charter (page 48 of first brief), was bound by the general laws of Missouri in force in 1851, as declared in Renshaw *v.* Pacific R.R. Co. (18 M. R., 210). The general law there made it usurious to issue a bond bearing more than six per cent. interest. (Laws of Mo., 1847, page 63.)

General Railroad Laws of Missouri.

The first general railroad law took effect Feb. 24, 1853 (Laws of Mo., 1853, 121). This was repealed by the general revision of the statutes made in 1855 (Revised Statutes of Mo., 1855, sec. 20, page 1026), and this in turn was partially repealed by the general statutes of 1865. The revised statutes of 1855 were in force when the special charter power herein involved was granted.

The last revision, in force when the contracts herein involved were made, was that contained in the general statutes of Mo. of 1865.

With the exceptions noted, the law was re-enacted in all these revisions.

The law of 1855 is here quoted, with notes in brackets, showing similar sections in law of 1865:

Revised Statutes of Mo., 1855, vol. 1, p. 427.

"Sec. 30. It shall be lawful for the county court of any county, and the city council of any city, to subscribe to the capital stock of any railroad company *duly organized* under *this or any other act in this State;* and the county court or city council subscribing, or proposing to subscribe, to such capital stock, may, for information, cause an election to be held, to ascertain the sense of the tax-payers of such county or such city as to such subscription, and as to whether the same shall be paid by issue of county or city bonds, as the case may be, or by taxation."

The word "may" in above section always meant "shall," and made an election of tax-payers a condition precedent to subscription wherever it was made applicable to a charter power like that involved in this case.

L. & D. R.R. *v.* Co. Court and Platte Co., 42 M. R., 171 (June, 1868).

In 1873, over two years after the making of contracts herein, Judge Napton (at page 68 of Smith *v.* Clark Co.), in an *agreed* case, merely intimated a contrary opinion. As heretofore shown the bonds in that case recited that they were issued under the general railroad law and that such recital was then an estoppel. The section of charter which made general railroad law part of said charter was not brought to the court's attention; all that said case or that of State *ex rel.* A. J. Baker

v. Greene County (54 M. R., 539) decided in reference to general railroad law was that the subsequent amendatory laws of 1860, 1861, and 1865 and the constitution of 1865 did not use such apt words as to make applicable to charters previously granted the new provisions set forth in said amendatory acts requiring, instead of a majority of tax-payers, a majority of resident or qualified voters (laws of 1860 and 1861), or a majority of two thirds of qualified voters (constitution and laws of 1865). It is evident that no court has ever considered a charter power in which the general railroad law of 1855 was incorporated excepting in 42 M. R., 71. If Smith *v.* Clark County decided anything concerning section 30 of General R.R. law of 1855, it did not hold that it was not with other sections of said law a part of the charter.

In all other cases, excepting that relied upon in this case (page 49 of first brief), it was admissible to hold that the amendment or revision of section 30 swept it away, and that section 17, G. S., 1865, substituted for it, as well as the acts of 1860 and 1861, were prospective, and, therefore, inapplicable without apt words to the special charter powers previously granted. More than this was never decided in any case. Of all of those cases I made a synopsis showing decisions, in their chronological order, upon the last hearing of this case (No. 32, October term, 1884, Scotland County *v.* Hill). Neither in this case, nor upon the previous hearing in this case, have I relied upon or even cited the decisions of supreme court of Missouri in—

Weil *v.* Greene County, 69 M. R., 281;
State *ex rel. v.* Garroute, 67 M. R., 445;
State *ex rel. v.* Dallas Co. Court, 71 M. R., 329;

completely overruling the earlier decisions, because I understood that this Court refused to follow them or reopen the controversy.

It is submitted that neither of said decisions of this Court preclude me from presenting the points that the general railroad law of 1855 cited became part of the A. and B. charter. If the 30th section became part of said charter, it would defeat plaintiff's case absolutely, because it was pleaded (pages 10 and 14) without denial and admitted (at page 344 of printed Record) that no election of *tax-payers* was ever ordered or held. If section 30 did not enter into the charter, and the remaining sections did, it made the bonds usurious (as shown at page 50 of first brief).

If section 12 of the A. and B. charter did not make either of the sections of the general railroad law of 1855 part of the charter, the Court erred in not limiting the judgment, as shown in XXth assignment of error (page 30 of first brief).

Continuing the citation of said sections of general railroad law, we come to—

"Section 31, R. S. of Mo., 1855, p. 429, continued in force as section 18, G. S. of Mo., 1865, page 338. Upon the making of such subscription by any county court or city, as provided for in the previous section, such county or city shall thereupon become, like other subscribers to such stock, entitled to the privileges granted, and subject to the liabilities imposed by this act, or by the charter of the company in which such subscriptions shall be made. And, in order to raise funds to pay the installments which may be called for, from time to time, by

the board of directors of such railroad, it shall be the duty of the county court or city council making such subscription, to issue their bonds, or levy a special tax, upon all property and taxables, made taxable by law for State and county purposes, and upon the actual capital that all merchants and grocers may have invested in business, in the county or city, to pay such installments," &c.

"Sec. 32, R. S. of Mo., 1855, p. 429 (sec. 31 of laws of 1853). For all such taxes levied and collected for railroad purposes, the County Court or the city council, as the case may be, shall cause to be issued and delivered to the *persons paying such special tax*, a certificate for the amounts thereof paid; and such certificate shall state the county or city in which, and the railroad for which, the tax was collected, and shall be transferable by the holders thereof, and convertible into stock of such railroad, whenever presented in amounts equal to one or more entire shares of the stock of such railroad, to such proper officer of such County Court or city council as shall be designated by such court or council, by transfer to be made by such officer, in conformity with the *by-laws of the railroad company*. And when such transfer is made, said company shall issue a certificate of stock, to the person entitled thereto, or his legal representatives, for the *number of full shares thus transferred: Provided*, That no such certificate of stock shall issue upon such transfer, unless the full amount of the par value thereon shall have first been paid to the railroad company, by the County Court or city council; *And provided further*, That the total amount of stock certificates so to be issued shall not exceed the amount of the subscription made by such county or city; *and in case any of the tax-payers* in any county or city in which a railroad tax shall be levied, shall have subscribed, in good faith, to the capital stock of any railroad to which the county or city shall have subscribed, the same shall be entitled to a credit or deduction on the amounts assessed upon them respectively, in proportion to the amounts of their *bona fide* subscriptions," etc.

Sec. 32, R.R. law of Mo., 1853, 121, revised as sec. 33, R. S., 1855, page 429, continued in force as sec. 21, G. S. of Mo., 1865, page 339, provided as follows:

"Any county subscribing for railroad stock which shall have internal improvement funds, or overflowed or swamp lands, granted to it by the State, may apply such funds, or mortgage or sell such overflowed or swamp lands, to pay such subscription or any part thereof, and provide for the remainder, if any, *by the tax as aforesaid;* and any county or city subscribing as aforesaid, may (if so required by the railroad company, to raise funds to pay the installments in anticipation of the collection and payment of its railroad tax) issue the bonds of such city or county, of denominations not exceeding one thousand dollars, and bearing interest at a rate not exceeding *seven* per cent. per annum."

Sec. 33, Laws of Mo., 1853, p. 121, revised as sec. 34, R. S. Mo., 1855, p. 428, and continued as sec. 21, G. S. Mo., 1865, p. 338: "Any county court or city which has *heretofore* subscribed to the capital stock of any railroad in this State shall be entitled to the privileges and subject to the liabilities of other stockholders in such company, and the County Court or city council *shall have all the rights and powers* to provide funds to pay *such subscription* as are granted to county

courts and cities by this act, and may levy a *special tax to pay the interest on their bonds*, or to provide a sinking fund to pay the principal," revised for the last time in 1855, and therefore inapplicable to any subscription made after said date.

Under the succeeding section was found the only authority to enforce special charter bond judgments by mandamus :

"SEC. 35. (22 G. S., 1865.) Any county court refusing to perform any of the duties required of it by this act may be proceeded against by writ of *mandamus*," &c.

Sec. 55, General R.R. Law of Mo., 1853, p. 143, revised at sec. 56, General R.R. Law of Mo. 1855, p. 438 : "The Legislature may at any time alter or amend this act, but such alteration shall not impair the right of companies previously organized or take away any remedy given against such corporation, its stockholders, or officers for any liability which shall have been previously incurred."

In the agreed case of Scotland County *v.* M., I. & N. R.R. Co. (65 M. R., 127), said railway company (payee in the bonds herein involved) escaped repeal of section 9 of its charter (page 65, printed Record) by invoking and obtaining from the Supreme Court of Missouri the declaration that the aforesaid section applied to the A. & B. charter.

Sec. 56, General R.R. Law, 1853, revised as sec. 57, General R.R. Law of 1855, p. 438, by omitting words contained in brackets : "All existing railroad corporations within this State and such as may be hereafter chartered shall have and possess all the powers and privileges contained in this act, and they shall be subject to all the duties, liabilities, and provisions not inconsistent with the provisions of their charter contained in (sections 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, to 53, inclusive of) this act.

III.

Since my first brief was prepared the opinion of the Court, delivered by Mr. Justice Harlan in case of Purdy *v.* Lansing (128 U. S., 559) has been published. The principle there enunciated seems applicable to the points made (pages 38 and 45 of first brief herein), concerning failure of proof that the route of A. & B. R.R. may have been in Scotland county, that the M., I. & N. was its successor, and the failure to plead said facts.

An analysis of the cases of State *v.* Shortridge (56 M. R., 130), State *ex rel.* Watkins *v.* Co. Court (68 M. R., 44) will show that they are authorities in our favor as to limitation of judgment, XXth Assignment of Error.

State *ex rel. v.* Rainey (74 M. R., 229) avowedly decides but three points, neither of which are material in this case.

All that was decided by the case of Scotland County *v.* M., I. & N. R.R. Co. (65 M. R., 123) was that the 56th section of general R.R. law (sec. 55 of R.R. law of 1853) hereinbefore cited applied to the Alexandria and Bloomfield R.R. charter and prevented repeal of section 9 of said charter (page 65 of printed Record of this case). That section was invoked by Mr. Hughes, the counsel who has always represented plaintiff in this case.

Everything else involved in that case is shown by the report thereof to have been stipulated away in an inevitable "agreed case." Under such circumstances the argument of Messrs. Hughes and Overall (at page 14 of their brief, filed April 15, 1889) seems utterly unfounded in attempting, by citing said case, to supply the flagrant failure of plaintiff to prove or plead in this case that the M., I. & N. was the lawful successor of the A. & B. R.R. charter.

Judge Thayer's opinion in 34 Federal Reporter, 208, avowedly followed the law as laid down in this case by Judge Treat, and should have no additional authority in consideration of points here made in attempting to reverse Judge Treat's rulings in that very case.

It is not for a moment contended that any decision which this Court has made concerning the transfer of privileges to consolidated companies shall be reconsidered. The point made in this case is that the facts disclosed did not constitute a lawful consolidation and transfer of privileges.

The case of Carroll County *v.* Smith (111 U. S., 562) involved a question of constructive notice, not one of actual notice as in this case.

If the amendatory law of 1866 was (as contended at page 41 of first brief) unconstitutional every purchaser was bound to take notice of that fact. (Dallas County *v.* McKenzie, 94 U. S., 255; Merchants' Bank *v.* Bergen Co., 115, 384, and cases cited.) The questions herein presented involved power, not the organization of corporations whether *de jure or de facto*. I have discussed no question which I do not believe to be fully open to controversy. I have made no point in this case which has ever been passed upon in any case from Missouri, unless it may be the question of adjudication which was decided in our favor upon the previous hearing of this case (112 U. S., 183).

The form of bond set forth at page 2 of brief of defendant in error does not contain the important words "countersigned and delivered September 20, 1871, Charles Mety, trustee" (those numbered above 100 "countersigned, December 11, 1871"); the copy set forth at page 23 of brief of plaintiff in error and in printed Record at page 88 agree and are correct.

The brief of plaintiff in error at page 8 does not fully and correctly copy the memorandum (it was not an order of a court which only speaks under seal) of Dawson and Cooper, the justices, to Mety. It omits the very important postscript of "Mr. Mety: As they propose to give you an indemnifying bond you had better accept it. D. B. Cooper." One of the earliest proofs of the conspiracy crops out in this postscript.

There can be no implied power of taxation under the construction which Missouri courts have always placed upon their laws.

Carondelet *v.* Picot, 38 M. R., 125, 1866.
McPike *v.* Pen., 51 M. R., 63.
State *v.* Shortridge, 56 M. R., 126.

There can be no implied power to levy taxes under the rulings of this Court if in the act itself or in some general contemporaneous law a contrary intent is manifested, as has been shown in this case (United States *v.* New Orleans, 98 U. S., 397).

HENRY A. CUNNINGHAM,
Attorney for Plaintiff in Error.

Office Supreme Court U. S.
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CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE COUNTY OF SCOTLAND IN THE STATE OF MISSOURI,
Plaintiff in Error,
vs.
WILLIAM HILL,
Defendant in Error.
} *No. 255.*

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

F. T. HUGHES,
J. H. OVERALL.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE COUNTY OF SCOTLAND IN THE STATE OF MISSOURI,
Plaintiff in Error,
vs.
WILLIAM HILL,
Defendant in Error.
} *No. 255.*

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

This suit was brought upon certain coupons detached from bonds issued by the County of Scotland, in the State of Missouri.

The following copy of one of the bonds is found p. 52, printed record : —

$1,000. UNITED STATES OF AMERICA. No. 5

EIGHT PER CENT RAILROAD BOND.

County of Scotland. *Twenty-five years.*

Know all men by these presents, that the County of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa and Nebraska Railway Company, a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company, (formerly Alexandria and Bloomfield Railroad Company,) of the State of Missouri, and the Iowa Southern Railway Company of the State of Iowa, in the sum of $1,000, which sum the said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company or bearer at the Famers Loan and Trust Company, New York, on the thirty-first day of December, A. D., 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent per annum, which interest shall be payable annually in the city of New York, on the thirty-first day of December in each year, as the same shall become due, on the presentation of the coupons hereto annexed.

This bond being issued under and pursuant to an order of the County Court of said Scotland County for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly, of the State of Missouri, entitled an act to incorporate the Alexandria and Bloomfield Railroad Company, approved Feb. 9, 1857.

In testimony whereof the said County of Scotland has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto and the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court. This done at the town of Memphis in the

county of Scotland in the State of Missouri, this first day of September, A. D., 1870.

WILLIAM DAWSON,
Presiding Justice of the County Court of Scotland County, Mo.

Attest:

{ SCOTLAND COUNTY COURT, MISSOURI SEAL. } STERLING MCDONALD, *Clerk of the County Court of Scotland County, Mo.*

To each of these bonds were annexed twenty-five interest coupons, each for $80, maturing annually, for the inter, est thereon.

The evidence shows these bonds were delivered before the 21st of December, 1871, to the Missouri, Iowa and Nebraska Railway Company, with the interest coupons attached, in payment of the subscription to the capital stock of the company and such of them, as had attached to them, the coupons sued on, were before the maturity of such coupons, sold to various persons, who purchased them for value without notice of any of the equities or alleged defenses set up in the various pleas to the petition, by the plaintiff in error, and especially the fourteenth plea alleging a former adjudication between Wagner, and other tax payers of the county, the railroad company and one Mety, who was trustee to hold the bonds until the conditions of the subscription were fulfilled.

These *bona fide* and innocent purchasers for value sold the bonds and coupons to the defendant in error, while it is alleged in the replication to the pleas, that defendant in error purchased these bonds and coupons for value without notice of the alleged defenses; still as the defendant in error replied also that he had purchased the bonds and coupons from other *bona fide* holders who had purchased them for value before maturity without notice of any of such defenses, he could recover without proving his own want of such notice.

He, therefore, without admitting his own knowledge of

such defenses at the time of his purchase, rested his case upon proving the execution of the bonds and that each and every one of the parties from whom he purchased acquired all such bonds and coupons at the time for value, without any notice whatever of any defense on the part of the county or of the pendency of the said Wagner's suit, or the judgment or final decree rendered in the cause, in fact proved that they never heard of any of such defenses until long after they had sold the bonds and coupons to defendant in error, and at a time when they were asked to give their deposition or testify in this cause. The court below held that upon such proof defendant in error could recover, and plaintiff in error offering no evidence to the contrary, the court instructed the jury to return a verdict for defendant in error, and from the judgment rendered plaintiff brings the case here.

This is the third time the validity of these bonds and coupons has been before this court. The first case was heard in 1877, and is reported in 94 U. S. 682, County of Scotland *v.* Thomas, wherein the bonds were held to be legal and binding on the county. The second in 1884, reported in 112 U. S. 181, which is this case, this court having reversed and remanded the case for error in the court below in excluding the record of the said Wagner suit when offered in evidence accompanied with an offer to further prove that plaintiff Hill and each and every person from whom he purchased or acquired such bonds and coupons had actual notice at the time of the Wagner suit and the final result of the same. It is now again brought here as before stated.

A reference and citation of all the laws necessary to a determination of the questions involved in the present controversy, will be found in the Thomas case, and it will appear, as stated on the face of the bonds, that the subscription was made and bonds issued to the Missouri, Iowa and Nebraska Railway Company, under the act of the Missouri Legislature approved February 9th, 1857, in-

corporating the Alexandria and Bloomfield Railroad Company. This company by virtue of an amendatory act approved February 9th, 1866, changed its name to the Alexandria and Nebraska City Railroad Company, and that this company consolidated with the Iowa Southern Railway Company, a railway company in Iowa to connect at the line dividing the States. The consolidation was authorized by laws of the State of Missouri, approved March 2d, 1869 The tenth section of the act incorporating the Alexandria and Bloomfield Company, gave to it all the privileges, rights and immunities, which were granted to the North Missouri Railroad Company by an act incorporating that company, approved March 3d, 1851. The fourteenth section of the later act authorized the county court of any county in which any part of the route of said railroad might be to subscribe to the stock of the company, and issue the bonds of the county in payment thereof, without a precedent vote of the people. A part of the route was within this county, and the court took the stock and issued the bonds, with the coupons in question, without such vote.

A constitution of the State adopted in 1865 prohibited subscriptions by counties, cities and towns to private corporations without a vote of two-thirds of the qualified votes of such county, and as there was no such vote in the present case it was claimed there was no authority for the subscription and consequently the bonds were void.

conditions were fully complied with, see orders of the county court printed record, p. 319, the first as follows: Memphis Mo., September 20th, 1871, Mr. Charles Mety, trustee, etc. Dear sir: The iron is laid on the Missouri, Iowa and Nebraska railway to the depot, and the building is up. The company having complied with all the requirements you will please deliver them the first hundred thousand dollars of the county subscription and receive stock for the same. Yours, etc.

WILLIAM DAWSON,
D. B. COOPER,
Justices of the Scotland County Court.

At page 325, printed record, will be found authority for the delivery of the remaining one hundred thousand dollars of said bonds. So, in any event, the subscription and bonds must be the act of the county, represented by its county court.

II.

Where a municipal corporation has power, under any circumstances, to issue negotiable securities, the *bona fide* holder has a right to presume them valid, and they are not to be impeached any more than other negotiable instruments. He need not look beyond the recitals in the bonds.

City of Lexington *v.* Butler, 14 Wall. 282;
Town of Coloma *v.* Eaves, 92 U. S. 484;
Macon County *v.* Shores, 97 U. S. 272;
County of Ralls *v.* Douglass, 105 U. S. 728.

III.

The defendant in error occupies the position of a *bona fide* holder of the bonds and coupons in suit for value, without notice of any of the defenses set up in the various pleas, and especially the plea of former adjudication set up

in the case of Wagner *v.* Mety, between the county and railroad company.

Story on Promissory Notes, sec. 191;
1 Daniel, 753;
2 Pars. on Bills and Notes, 438;
Randolph on Com. Paper, 2d vol., sec. 987;
Commissioners *v.* Clark County, 94 U. S. 278;
Cromwell *v.* Sac County, 96 U. S. 59;
Scotland County *v.* Hill, 112 U. S. 183;
Hill *v.* Scotland County, Mo., 34 Fed. Rep. 208.

The last case cited this was decided in May, 1888, by Judge Thayer in the Northern Division, Eastern District of Missouri, and was a suit on subsequent coupons from same bonds, and submitted on same evidence as case at bar.

Mr. Randolph says: "And one who purchases a bill or note with notice of defects in it from a *bona fide* owner without any such notice, is by the law merchant a holder in good faith." And this has been held to be so even in a case where the indorser was a bank of which the purchaser was a director, and notwithstanding the facts that the purchaser was the payee's father, and that the note was given for illegal margins in stock, and therefore void, except in the hands of a *bona fide* holder.

The case of Commissioners *v.* Clark, is in point. The third instruction given by the court below was: "That if the bank gave value for the bonds and purchased them before due without notice of the fraud set up and relied on by the county in respect to the bond given in evidence, and sold the bonds in suit to the plaintiff, he is entitled to recover on the bonds, though he had notice when he obtained them that the county claimed they were fraudulent, and that a suit was pending contesting their validity, the record of which had been introduced in evidence." This court in reviewing the instruction said: "Standard authorities show

which protects the purchaser without notice, says Story, "is indispensable to the security and circulation of negotiable instruments and is founded on the most comprehensive and liberal principles of public policy." And this was the construction put upon Your Honor's decision in the 112 U. S., *supra*, by Judge Treat in rendering judgment herein, and also by Judge Thayer, his successor, in the case in 34th Feb. Rep. before referred to.

IV.

This court in the Thomas case first construed the issuing of these bonds and the laws applicable thereto and held them to be legal and binding on the county. That decision was in accordance with the laws of the State of Missouri when the bonds in question were put on the market as commercial paper. That decision and others bearing upon the same questions had been frequently cited and approved and rights acquired on the faith of it when this court said in the case of Greene County *v.* Conness, 109 U. S. 104, "From the views thus expressed we are not disposed to swerve."

V.

Neither the pendency of the injunction suit of Wagner *v.* Mety, or the decree in that case can defeat the right of the defendant in error to recover on the facts as proven in this case. The cases cited of

Commissioners *v.* Clark County;
Cromwell *v.* Sac County;
Scotland County *v.* Hill; also
County of Warren *v.* Marcy, 97 U. S. 96;
Stewart *v.* Lansing, 104 U. S. 509;
Burgess *v.* Seligman, 107 U. S. 20;
Carroll County *v.* Smith, 111 U. S. 562.

Mr. Justice Matthews delivering the opinion in the last case said: "On the other hand we do not agree with coun-

sel for the plaintiff in error that the pendency of the injunction bill referred to in the last plea affects the title of the defendant in error as a *bona fide* holder of the bonds for value or that this court is bound to follow and apply the judgment of the Supreme Court of Mississippi in that case reported as Hawkins *v.* Carroll Co., 50 Miss. 735, perpetuating the injunction on the ground that the constitution and laws of the State required a majority of two-thirds of those qualified to vote, to be cast at the election to support the validity of the bonds. The defendant in error was no party to that suit and the record of the judgment is therefore no estoppel. The bonds were negotiable and there was therefore no constructive notice of any fraud or illegality by virtue of the doctrine of *lis pendens*. * * * The plaintiff has a right under the constitution of the United States to the independent judgment of these courts to determine for themselves what is the law of the State by which his rights are fixed and governed. It was to that very end that the constitution granted to citizens of one State suing in another the choice of resorting to a Federal tribunal." Surely our case is much stronger than this. When the case was here before the record showed that plaintiff in error had in the trial below offered "to prove actual notice not only to the plaintiff when he bought but to every other buyer and holder of the bonds from the time they left the hands of Mety pending the suit, until they came to him." The court held that on such proof the defense of the county would have been sustained. We contended on the hearing of the case that the offer of oral proof without the record showing that some witness was actually present to testify should be rejected, but the court held otherwise, and the cause remanded. The record now shows that no such proof existed, nor was defendant in error in any way party or privy to the Wagner-Mety suit.

VI.

The first instruction prayed for by plaintiff in error was properly refused by the court below. The instruction does not set out in what respect the act of 1866, amending the charter of the Alexandria and Bloomfield, and authorizing a change of name, was in violation of the Missouri constitution, and we are satisfied it is not a violation in any respect. This court in both the Thomas cases said the amendatory act but served to carry out the original purpose of the A. & B. charter, and that power was reserved in the general laws of the State made applicable to this charter to make the amendments.

The Supreme Court of Missouri in the case of this County *v.* The Missouri, Iowa and Nebraska Railway Company, held that the company was in possession of all the rights and privileges conferred on the Alexandria and Bloomfield Railroad Company by the act of its incorporation Feb. 9, 1857, and that therefore the property of the Missouri, Iowa and Nebraska Railway Company was exempt from taxation for a limited period after completion by virtue of section 9 of the said A. & B. charter.

> Scotland County *v.* Missouri, Iowa and Nebraska Railway Company, 65 Mo. 123.

This case alone should suffice on this point, because the questions of the transfer of the privileges of the constituent companies by change of name and consolidation was necessarily and directly before the court. The company at most simply changed the name and this would not destroy the corporate entity, or disturb the original franchises and privileges.

> Bucksport and Bangor R. R. *v.* Buck, 68 Me. 81;
> 19 Amer. Ry. Rep. 10;
> Racine Co. Bank *v.* Ayers, 12 Wis. 512;
> Mil. and N. Ill. R. R. *v.* Field, *Id.* 340.

Again, no such question can be raised by a subscriber, 1st, because he is estopped by his contract of subscription, and 2d, because it is collateral. Such questions can only be raised by the State itself by *quo warranto* or other direct proceeding.

Cooley Const. Lim., 254 and note;
Wallace *v.* Loomis, 97 U. S. 146;
Rorer on R. Rds., p. 97;
Atlantic & P. R. R. *v.* St. Louis, 66 Mo. 228;
Montpelier & W. R. R. *v.* Langden 46 Vt. 284;
Parker *v.* North P. R. R., 33 Mich., p. 23;
Smith *v.* Miss., 14 Miss. 179;
People *v.* Maynard, 15 Mich. 470.

In the last cited the court held that the State itself was estopped by its acquiescence.

Says Campbell, J.: "Where the illegality was suggested on *constitutional* grounds, the rights are properly regarded as depending quite as much on the acquiescence as on the regularity of their origin and no *ex post facto* inquiry can be permitted to undo their corporate existence."

Even if a charter was obtained by fraud; until the State sees fit to interfere the charter is a subsisting one and such a fraud is not a defense to an action to recover the amount of a subscription to the stock.

1st vol. Wood on R. R. 23.

"The organization was the same after as before the change." Menasha *v.* Hazard, 102 U. S. at 95.

VII.

The act is not void by reason of a failure to comply with the provisions of the Missouri Constitution.

Henderson *v.* Jackson County, 2d McCrary C. C. Rep. 614.

The corporation at least was a *de facto* corporation in possession of and acting under the provisions of the act — and this would be sufficient authority for the bonds in the hands of a *bona fide* purchaser and estops the county from questioning the legality of its existence when sued on obligations given to it.

Commissioners *v.* Bolles, 94 U. S. 104;
Chubb *v.* Upton, 95 U. S. 667;
County of Ralls *v.* Douglass, 105 U. S. 729.

In the case in 95 U. S. Mr. Justice Hunt upon this question says: —

"It is settled by the decisions of the courts of the United States and by the decisions of many of the State courts, that one who contracts with an acting corporation cannot defend himself against a claim on such contract in a suit by the corperation by alleging the irregularity of its organization. This was settled more than a half century since in the courts of New York and has recently been affirmed in this court.

VIII.

The court below correctly disposed of the pleas about the 6th maturing coupon in suit having been once merged in a judgment and could not therefore be included in this suit. There is no pretense whatever that the county ever paid the coupons or any part of them or is liable to on account of the former alleged judgment.

We deem it quite sufficient to quote the language of Judge Treat at pages, 98 and 99, printed Record.

The Court: "The point involved I understand is this, and if I am not properly informed counsel must correct me. In a former suit the declaration did not include the 6th coupon, but the 6th coupon had been filed.

It is a rule here in this court that in all of these cases a party must file the coupons sued on and when judgment is

obtained the clerk shall mark upon them "canceled" because under the ordinary rules of law coupons were filed in the judgment and the cancellation mark is for the purpose of preventing their being set afloat again as negotiable paper. Now, if by mistake the party filed a coupon on which he had not declared it was simply an error. Having received no judgment on that coupon the court permitted it to be withdrawn, because it was not involved in the controversy and filed by mistake. In other words it should not have been on the records of this court." Those being the facts the court permitted the coupons to be introduced in this case, which, certainly, was right.

F. T. HUGHES,
J. H. OVERALL.